

10 NOVEMBER 1947

I N D E X  
Of  
WITNESSES

<u>Defense' Witnesses</u>	<u>Page</u>
TAKEDA, Hisashi (recalled)	32820
Direct by Lr. Brooks	32820
Direct (cont'd) by Lr. Brooks	32846
(Witness excused)	32866
KATAKURA, Tadashi (recalled)	32867
Direct by Mr. Brooks	32867
(Witness excused)	32870
KODAMA, Tomeo	32870
Direct by Mr. Brooks	32871
Cross by Colonel Woolworth	32879
(Witness excused)	32880
<u>AFTERNOON RECESS</u>	32880
KAWABE, Torashiro (recalled)	32890
Direct by Mr. Brooks	32890
Cross by Colonel Woolworth	32898

10 NOVEMBER 1947

I N D E X

Of

EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidenc</u>
487	3413		Affidavit of NAKAMURA, Kotaro		32803
2647	3413-A		Certificate of Death of NAKAMURA, Kotaro on 29 August 1947		32803
286	3414		Certificate issued by the First Demobilization Bureau re the Reduction in Military Officers' Salary by virtue of Imperial Ordinance No. 103 dtd 27 May 1931		32807
1759	3415		Affidavit of SOGO, Shinji		32808
1966	3416		Excerpt from the Secret Diary (MAN-MITSU-DAI- NIKKI) Vol. 1, 1931 War Ministry - Report re Address of Instruction by the Commander of the Tokyo Military Police on 19 August 1931		32810
			<u>MORNING RECESS</u>		32812
1922	3417		Certificate of non-avail- ability, dated 24 July 1947 of certain docu- ments		32814
2524	3418		Certificate of non-avail- ability, dated 5 September 1947 of certain documents		32815

10 NOVEMBER 1947

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidenc</u>
2641	3419		Certificate dated 11 September 1947 received from the Central Intelligence Group, Washington with two letters attached		32816
2739	3420		Affidavit of TAKEDA, Hisashi		32820
2774	3420-A		Certificate of Appointments of TAKEDA, Hisashi		32820
1641		3421	The Manchurian Incident - The Outlines and Progress of the Military Operations of the Kwantung Army from 19 September 1931 to February 1932	32824	
1838		3421-A	Excerpt therefrom - The Relations of the Despatch and Withdrawal of the Army and Navy Forces		32824
	3422		Certificate of Authenticity of 16 Telegrams (Defense Documents 2048-A to 2048-P)		32832

10 NOVEMBER 1947

# INDEX

## Of EXHIBITS (cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2048-A to 2048-P incl.	3422-A to 3422-P incl.		Series of 16 telegrams between the War Minister or his Vice- Minister and the Com- mander of the Kwantung Army or his Chief of Staff		32832
2096	3423		Letter from the Chief of General Staff to the War Minister dated 22 September 1931 (Excerpt from Exhibit No. 3038-G)		32834
	3424		September and October issue, 1931 of "The Japan Chronicle"	32837	
1938	3425		Excerpt from the Lan- churian-Secret-Great- Diary (MAN-MITSU-DAI- NIKKI) Vol. 1, 1931 - Instruction given to Major-General HASHIMOTO, Toranosuke by the War Minister on 24 September 1931		3284
			<u>NOON RECESS</u>		3284
	3426		Volume entitled "Collection of Documents relating to the League of Nations, Vol. III"	32851	



10 NOVEMBER 1947

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
	3427		Volume entitled "Observations of the Japanese Government on the Report of the Commission of Inquiry"	32851	
1937	3428		Telegram from the Vice-Minister of War to the Chief of Staff of the Kwantung Army dated 1 October 1931 (Excerpt from Exhibit No. 3038-G)		32860
1965	3429		Telegram from the Vice-Minister of War to the Chief of Staff of the Kwantung Army dated 11 November 1931 (Excerpt from Exhibit No. 3038-G)		32861
2047	3430		Affidavit of KATAKURA, Tadashi		32868
1760	3431		Affidavit of KODAMA, Tomeo		32874
2853	3432		Certificate of Illness of Witness SHIDEHARA, Kijuro		32881
1784	3433		Affidavit of Patrick J. Hurley, Secretary of War for the United States of America in 1931		32885
2588	3434		Affidavit of KAWABE, Torashiro		32892

1 Monday, 10 November 1947

2 - - -

3  
4 INTERNATIONAL MILITARY TRIBUNAL  
5 FOR THE FAR EAST  
6 Court House of the Tribunal  
7 War Ministry Building  
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,  
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, all Members sitting, with  
14 the exception of: HONORABLE JUSTICE SIR WILLIAM F.  
15 WEBB, Member from the Commonwealth of Australia and  
16 HONORABLE JUSTICE R. B. PAL, Member from India, not  
17 sitting from 0930 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20 - - -

21 (English to Japanese and Japanese  
22 to English interpretation was made by the  
23 Language Section, INTFE.)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 ACTING PRESIDENT: First, I will ask the  
4 Clerk of the Court to read paragraph 3 of General  
5 Orders No. 18, General Headquarters, Supreme  
6 Commander for the Allied Powers.

7 CLERK OF THE COURT: (Reading):

8 "GENERAL HEADQUARTERS

9 "SUPREME COMMANDER FOR THE ALLIED POWERS

10 "APO 500

11 "7 November 1947

12 "GENERAL ORDERS No. 18

13 "APPOINTMENT OF ACTING PRESIDENT OF THE  
14 INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

15 "Paragraph 3

16 "Under the provisions of Section I, Charter  
17 of the International Military Tribunal for the Far  
18 East, published in General Orders 20, General Head-  
19 quarters, Supreme Commander for the Allied Powers,  
20 26 April 1946, Major General Myron C. Cramer, United  
21 States Army, is appointed Acting President of the  
22 International Military Tribunal for the Far East  
23 during the absence of the President, the Honorable  
24 Sir William Flood Webb (Commonwealth of Australia).  
25

"AG 334 (7 November 47) SGS

"BY COMMAND OF GENERAL MacARTHUR

"PAUL J. MUELLER, Major General, General  
Staff Corps, Chief of Staff

"OFFICIAL:

"(S) Clarence E. Sheen

"For: R.M. LEVY, Colonel AGD, Adjutant  
General."

ACTING PRESIDENT: All the accused are  
present except MATSUI who is represented by counsel.  
We have a certificate from the prison surgeon at  
Sugamo, certifying that he is ill and unable to  
attend the trial today. This certificate will be  
recorded and filed.

MR. MATTICE: If the Tribunal please, we  
have concluded the individual defense of the accused  
MATSUI, with the exception of his testimony, reserving  
the right to give his testimony when he is able to  
attend.

ACTING PRESIDENT: Mr. Blakeney.

MR. BLAKENEY: If the Tribunal please, the  
defense now responds to the motion of the prosecution,  
argued on 6 November, that the Tribunal reconsider and  
reverse its ruling of 17 June ordering the production  
by the prosecution of certain witnesses for cross-  
examination, failing which their testimony was to be



1 disregarded. The order of 17 June was one entered  
2 after an argument extending to forty pages of the  
3 record and full and careful consideration by the  
4 Tribunal. That the order in question was no hasty  
5 or ill-considered one is apparent from the fact that  
6 the motion upon which it was based had been under  
7 consideration by the Tribunal for eight days after  
8 the full argument, and over eight months from the  
9 time that it was first moved. Yet despite the  
10 Tribunal's repeated admonitions that a matter once  
11 determined will not be reconsidered, the prosecutor  
12 has now ventured to move the reopening of as  
13 exhaustively-argued and as carefully-considered a  
14 ruling as has ever been entered in the course of this  
15 trial. He alleged, as of course he must to justify  
16 the effrontery of this proceeding, that "the situation  
17 is now changed", and proceeds to "call to the Tribunal's  
18 attention three points which were not considered at  
19 that time" -- not considered, that is, by the  
20 prosecution, who overlooked presenting them then. The  
21 question has already been argued ad nauseum, and I  
22 shall not stop to review its history, but shall go  
23 directly to examination of this changed situation  
24 and these three points.  
25

The first of these "changed conditions" is



1 that, since, as it is alleged, the defense has,  
2 subsequently to the introduction of these affidavits  
3 of absent witnesses by the prosecution, itself  
4 tendered the affidavit of a witness, Woodhead, who  
5 was not made available for cross-examination, "a  
6 contrary rule has now been established by the Tribunal."  
7 This argument is so casuistic that it is impossible  
8 to believe it made in good faith. In the first place,  
9 the record cited by the prosecutor in this branch  
10 of his argument -- page 28,068 -- not only does  
11 not support but disproves his statement that the  
12 same objection was raised in that case by the  
13 prosecution. The defense position from beginning to  
14 end of this matter has been that of requesting the  
15 Tribunal to order production of the absent witness,  
16 or disregard his testimony. The prosecution neither  
17 at the time of the introduction of Woodhead's affidavit  
18 nor at any other time made any sort of demand for his  
19 production. The complete argument made at that time  
20 by this same prosecutor was: "The second objection is  
21 that the witness is not available for cross-examination  
22 even if it were permissible to introduce this affidavit."  
23 The prosecutor knows the meaning of words; he knows  
24 the difference between a demand for production and  
25 an objection because of non-production. Had he wanted

1 the witness produced, he would have demanded his  
2 attendance; had he felt his point to have validity,  
3 he would have argued it, and pressed it, and the  
4 Tribunal would have told him, as it did tell him  
5 on another such occasion when the attendance of the  
6 witness was demanded, that the application would be  
7 considered as was that of the defense. The prosecutor  
8 says that if this question had arisen after that of  
9 Woodhead, "the Tribunal would have applied the same  
10 rule and would have admitted the Russian affidavits  
11 in the same manner that they admitted the Woodhead  
12 affidavit." Yes. This is precisely what the Tribunal  
13 did: It admitted the Russian affidavits, every one  
14 of them, in the same manner that it did the Woodhead  
15 affidavit -- that is, on the condition that if the  
16 attendance of the affiant was requested, and the  
17 Tribunal considered the request justified, his  
18 attendance would be ordered. But the prosecutor  
19 made no such request as the defense made. If,  
20 however, the fact were as he states it to be, there  
21 would still be no smallest part of an analogy between  
22 that case and this. He says, "no proper and material  
23 distinction in principle can be made" between the  
24 two. The prosecutor recognizes no distinction in  
25 principle between Woodhead, a free man, and these

1 prisoners of war. But, waiving that, does he  
2 seriously contend that we, the defense, are to be  
3 told that unless we produce witnesses from overseas  
4 our failure to do so shall be construed as assent  
5 to his not producing his witnesses? Can he have  
6 forgot for the moment that he is a government --  
7 rather, a coalition of eleven governments, of the  
8 great nations of the earth? The prosecution has but  
9 to command, and their witnesses appear. The prosecution  
10 can bring Woodhead himself, if they desire, without  
11 asking any leave of court or defense. But what shall  
12 the defense do? Shall I foot the bill for the witness'  
13 passage? And shall I compel the British Government  
14 to grant the witness his passport and vise, and the  
15 Supreme Commander to admit him to Japan? How can  
16 the prosecutor stand before this Tribunal and say  
17 that defense and prosecution are on an equal footing  
18 in regard to production of witnesses, and not blush  
19 with shame to say it?

20           The second "changed condition" is that "it  
21 has been demonstrated that the prosecution has done all  
22 that it can to present these four deponents for cross-  
23 examination". The prosecution has made a variety of  
24 specious excuses; it has applied for extensions of  
25 time within which to bring the witnesses; it has done

1 everything possible, perhaps short of presenting  
2 the witnesses. But where is the demonstration that  
3 the prosecution "has done all that it can"? They  
4 brought six; why not another three or six? The  
5 reasons alleged for inability to call them --  
6 inability of the government of which they are prisoners  
7 of war to produce them on its own behalf in this  
8 trial -- are of the most unconvincing possible  
9 character. "Security" is frequently mentioned. How  
10 can the security of a state be menaced by anything  
11 which might be said by a former enemy soldier,  
12 prisoner of war in its control? If the witnesses  
13 appeared for cross-examination, it would be cross-  
14 examination on the matter in these affidavits, which  
15 considerations of security did not prevent the  
16 prosecution from publishing to the Tribunal; what  
17 claim of "security", then, could be advanced in  
18 connection with their testimony under cross-examination?  
19 The prosecutor, conceding that this is the most  
20 important of war-crimes trials, yet contends that  
21 trials going on in the U S S R cannot be conducted  
22 without the witnesses. Why cannot their affidavits  
23 be used there, the witnesses testifying in absentia  
24 there while they testify corporeally here? As the  
25 prosecutor admits, the cases in which it is alleged

1 that they are to testify "are being investigated at  
2 present, or haven't yet been investigated"; what  
3 then becomes of his excuse for not having produced  
4 the witnesses during the four and a half months since  
5 the Tribunal's order to do so? The Soviet authorities  
6 have had over two years to ascertain what testimony  
7 these witnesses can give. So far as concerns the  
8 prosecution's having done all that it can to produce  
9 the witnesses, I submit that the record of this  
10 Tribunal is utterly barren of any suggestion, not  
11 only of diligence, but even of the slightest pretence  
12 of an attempt to do so. It shows, if it shows  
13 anything, only that the right hand of the U S S R  
14 knows very well what the left hand proposes doing, and  
15 vetoes it.

16  
17 Third "changed condition". That a "vituper-  
18 ative attack" was made against "one of the participating  
19 nations, the substance of which was that duress had  
20 been used in obtaining the affidavits." The employ-  
21 ment by prosecutors of such terms as "vituperative"  
22 to characterize statements of unpalatable facts has  
23 become fairly common, and can be passed over. As  
24 for the charge of duress, no such charge was made  
25 by me -- for I am the counsel referred to. What I  
did was to speak of the fact that these witnesses



1 were prisoners of war. During the late war I had  
2 occasion to inspect many thousands of prisoners of  
3 war held by my country and its allies, and I can  
4 affirm that it was not uncommon to find them kept  
5 under armed guard, or, in a familiar figure of speech,  
6 with a gun in the back. Since, however, the prosecutor  
7 has seen fit to go beyond the bounds of legal argument,  
8 and to discuss as a question of fact whether duress  
9 has been proved -- he says that "the cross-examination  
10 of the witnesses just produced has demonstrated the  
11 emptiness of such a charge" -- I shall take the  
12 opportunity of meeting him on the facts. The testimony  
13 of one of the witnesses just produced was that he  
14 has been held as a prisoner since 27 September 1947;  
15 that he had never been charged with any crime or offence  
16 against the U S S R; that he was thrown into prison  
17 without being told of any reason therefor, and was  
18 held there for something over four months; that he  
19 learned that he was to be imprisoned from a lieutenant-  
20 general of the NKVD, or OGPU; and that during the  
21 time of his imprisonment his affidavit for use in this  
22 trial was prepared. These facts are more significant  
23 than the witness' answer to the question "Did you  
24 testify without any duress?" In the case of all  
25 these witnesses, in general, we can wonder whether

1 duress may not be inferred from the fact that with  
2 the lapse of near twenty-seven months since the  
3 Japanese surrender they yet remain prisoners of war --  
4 under armed guard.

1           The last "changed condition" is that whereas  
2 much of the evidence given by these absent affiants  
3 relates to the Kantokuen, the defense has now had a  
4 fair opportunity to cross-examine -- to cross-examine  
5 other witnesses, that is -- and that "further cross-  
6 examination on that subject would be needlessly  
7 repetitive." If the cross-examination would be need-  
8 lessly repetitive, so must be the testimony in chief.  
9 Why, then, is the admission of the evidence insisted  
10 upon? Or is this but the prosecutor's assurance that  
11 the cross-examination will fail and that his evidence  
12 should be accepted at face value? As the President  
13 lately reminded us, "There are no short cuts to  
14 proper judicial determination," and, "Cross-examination  
15 still remains the principal means of testing credit."  
16 It is a means which, I make so bold as to submit, cannot  
17 be replaced by a prosecutor's assertion that it is un-  
18 necessary; nor, we have the vanity to believe, has it  
19 to date failed. I will, indeed, gladly agree with  
20 the prosecution that cross-examination of these re-  
21 maining witnesses would be productive of the same  
22 result as in the past. However, continues the  
23 prosecutor, so far as these affidavits deal with  
24 other subjects than the Kantokuen, "The evidence is  
25 to a great extent cumulative," which is a reason for

1 not cross-examining the affiants. This can have only  
2 two meanings. One, that the evidence is worthless,  
3 in which event it should not be imposed upon the  
4 Tribunal. The other, that the prosecution's view of  
5 the case has been accepted by the Tribunal; that the  
6 decision has been made, wherefore no further evidence  
7 is required. This is the only meaning of the term  
8 "cumulative" that I understand, and this was the ex-  
9 planation of it given by the President of the Tri-  
10 bunal to the Soviet prosecutor the last time that  
11 this suggestion was made: "If we tell the defense  
12 we have heard enough, we are deciding their way."

13 We come now to the three points not prev-  
14 iously argued, which are alleged to dispose of the  
15 defense request for leave to reopen the general  
16 Soviet phase. But before dealing with them, let me  
17 mention again, in order to prevent any muddling of  
18 the record on that point, that the closing of the  
19 defense's Soviet phase was conditional, subject to  
20 later introduction of evidence relating to various  
21 matters reserved. These matters are not, I take it,  
22 now in question, but it is a matter of reopening the  
23 phase for the introduction of evidence deemed neces-  
24 sary as a result of the production of some witnesses  
25 for cross-examination and disclosure that others

would not be produced.

The first of the prosecutor's points "not hitherto argued" was, like the rest, available and known to the prosecution at the time of the original argument of this question. This is the fantastic contention that, by reading into evidence, prior to the rendition of decision on their eventual disposition, certain parts of the affidavits now under consideration, the defense "adopted" them, whatever that may be, and "abandoned or waived" its objection to their reception. Let us examine this mumbo-jumbo carefully. The affidavits were originally received in evidence, subject to later decision of the defense motion to strike. They were then in evidence; the whole of them, not just the parts read into the record. The defense then, in its Soviet phase, read into the record certain unread parts thereof, this being what the prosecutor refers to as "introducing into evidence," though the distinction is one of which he must be aware. But before ever any excerpt from such an affidavit was read by the defense, this statement of intention was made: "Until such time as the Tribunal shall have given its ruling on the request for the production of absent witnesses of the prosecution's Soviet phase, I shall use their



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2 hitherto argued" was, like the rest, available and  
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21 statement of intention was made: "Until such time  
22 as the Tribunal shall have given its ruling on the  
23 request for the production of absent witnesses of  
24 the prosecution's Soviet phase, I shall use their  
25

1 affidavits so far as they are of service to the  
2 defense. If, finally, it shall be determined to  
3 reject them as evidence, of course the parts so used  
4 by the defense will as well be stricken." Record  
5 page 23,182. This statement, it is now alleged, was  
6 an endeavor "to place the Tribunal on terms," terms  
7 which, it is pointed out, were not acceded to by the  
8 Tribunal. There was no objection by the prosecution  
9 at the time, nor did the Tribunal indicate that it  
10 considered that it was being "placed on terms," which  
11 of course it was not. What choice could the defense  
12 have made except to make what use it could of evidence,  
13 the ultimate disposition of which was as yet undeterm-  
14 ined, but was under consideration by the Tribunal?  
15 Such a proceeding appears logical and expeditious in  
16 dispensing with some amount of other evidence,  
17 certainly is not unprecedented, and must in any view  
18 be compulsory upon conscientious counsel; whereas  
19 the most that can be said of the objection to it, now  
20 raised, is that it is technical in the extreme. By  
21 the way, this argument is applied by its author to  
22 what he refers to as "three of the four affidavits  
23 with which we are now concerned." If it did apply  
24 to the three, and not to the one, the defense request  
25 for leave to reopen would not be affected by it.

1     Parenthetically, it should be noted that the affi-  
2     davits in question are not four; they are five, even  
3     if we concede that the case of the sixth affiant,  
4     KITA, which I shall come to presently, is exceptional.  
5     For what reason I do not undertake to surmise, the  
6     prosecutor ignores wholly the case of one of his  
7     witnesses, AKIKUSA Shun, whose status is identical  
8     with that of others whom he treats of.

9             "The defense," we are told, "had no right to  
10    assume that any affidavit would be excluded by reason  
11    of non-production of the deponent," meaning "affiant,"  
12    "and if the defense had testimony to meet these  
13    affidavits," it should have been presented before.  
14    How could such a compulsion be conceived to exist?  
15    The defense thought, when it moved the production of  
16    these witnesses or the rejection of their testimony,  
17    that every canon of justice or fairness compelled  
18    that procedure; it thinks so yet. That the defense  
19    was correct in that belief is evident from the  
20    decision of the Tribunal ordering the motion granted.  
21    I say that we felt so and were proved correct. But,  
22    correct or not, why should the defense have inundated  
23    the Tribunal with evidence in answer to these affi-  
24    davits, evidence which might be proved wholly un-  
25    necessary by the Tribunal's decision whether to

1 accept or reject? The prosecutor's reasoning comes  
2 to this: That the evidence was once accepted; that  
3 notwithstanding the defense urged, and the Tribunal  
4 later decided, that justice required production of  
5 the witnesses, the defense should have anticipated  
6 that long afterward the Tribunal would, merely be-  
7 cause a prosecutor demanded it, rescind its order  
8 which had already been fully executed and should  
9 have made its preparations accordingly.

10 And finally, on this point, the prosecutor  
11 is aghast at the proposed "innovation" of permitting  
12 the defense now to substitute new evidence for that  
13 stricken by the Tribunal's order. Where is the in-  
14 novation? The Soviet prosecution has within the  
15 week before the prosecutor spoke introduced new evi-  
16 dence, over a year after the close of its case, in  
17 the form of additional affidavits of the very wit-  
18 nesses produced for cross-examination, with the  
19 result of precisely the retrial of the Soviet phase  
20 which the prosecutor denominates unjustified. Yet  
21 the prosecutor's suggestion is that the defense should  
22 be denied leave to reopen to meet even this evidence,  
23 as well as matters arising out of the cross-  
24 examination of such witnesses as have been produced.

25 The second point not "hitherto argued"



1 concerns the Charter, which existed in its present  
2 form at the time of the original argument of this  
3 question on 9 June 1947. The defense have urged  
4 times without number that Article 13-A of the Charter  
5 contemplated the admission of some type of document  
6 offered by us, to have it nevertheless rejected by  
7 the Tribunal. The prosecutor's Olympian assurance  
8 that these sworn statements of his witnesses have  
9 probative value hardly establishes the fact, espe-  
10 cially in the light of the Tribunal's decision that  
11 in the absence of cross-examination they have none.  
12 The Tribunal is not compelled to admit evidence un-  
13 less it deems it to have probative value, and it is  
14 compelled by a prosecutor's assertion to deem it to  
15 have. Would such an affidavit as these, if offered  
16 by the defense, be received at all?

17 As for the third point, the procedure at  
18 Nuernberg, which trial concluded long before the  
19 original argument on this question, does it not  
20 suffice to say that the Tribunal has repeatedly  
21 announced that it would not consider itself bound  
22 by the procedure at Nuernberg and did not care even  
23 to hear the procedure there suggested as persuasive?  
24 This Tribunal has, after full and careful consider-  
25 ation, come to its conclusion in this matter, a



1 conclusion consistent with justice and a fair trial  
2 for the accused, and what other judges in other cir-  
3 cumstances may have decided is of less than persuasive  
4 effect.

5 I must point out one or two more matters in  
6 answer to the prosecutor. I wish again to emphasize  
7 that the order of the Tribunal of 17 June was that  
8 the witnesses be produced within a time limited,  
9 failing which their evidence would be disregarded.  
10 The time, as extended, expired on 17 October, or  
11 twenty days before this motion for reconsideration,  
12 and the Tribunal's order was then by its terms  
13 executed. It had become effective; there was nothing  
14 further to be done. The witnesses had not been  
15 produced, and their testimony was to be disregarded.  
16 If this present application should prevail, there  
17 would never be any certainty concerning the orders  
18 of the Tribunal; for if they can be reopened twenty  
19 days after becoming final, so they can six weeks or  
20 a year. This order, by the way, had once before  
21 become final, on 18 August, after which date only was  
22 the application for extension of time filed.

23 The prosecutor mentions once or twice that  
24 the affidavits of KUSABA and MIYAKE, both now de-  
25 ceased, and of NOHARA, now in Germany, were admitted

by the Tribunal. He fails to mention that by the order of 17 June they were ordered received de bene esse. The term "de bene esse" is one very familiar to American lawyers, but I venture to say that none of us understands what it means in this context. The only use known to us is not applicable here. Whatever it means -- perhaps "for whatever it is worth, if anything" would be a reasonable surmise -- it clearly imports something different from unconditional admission into evidence, and if the affidavit of KITA were to be accepted at all, despite the non-compliance with the order of the Tribunal, it would doubtless be on the same terms.

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1 Furthermore, the case of the affiant TOMINAGA  
2 is unique. His production was unequivocally ordered  
3 by the Tribunal at the time of acceptance of his affi-  
4 davit (record page 7,529). The representation at the  
5 time was that he was sick and would be produced  
6 immediately upon his recovery. As in the case of all  
7 the other witnesses from this phase reported as ill,  
8 no medical certificate was offered to the Tribunal  
9 but only the secondary hearsay evidence of Soviet  
10 authorities in Tokyo, with no specification of the  
11 nature or gravity of the illness to enable the Tri-  
12 bunal to judge of the validity of the excuse. The  
13 unreliability of this type of evidence has been demon-  
14 strated strikingly when one of the witnesses so re-  
15 ported sick has testified before the Tribunal not a  
16 fortnight since that he has never been sick since  
17 becoming a prisoner of war. TOMINAGA, at all events,  
18 was stated by the prosecution at the time his affi-  
19 davit was tendered to be a most important witness, one  
20 whose production was ardently desired by them. But  
21 this was over a year ago, during which intervening  
22 time has appeared neither witness nor medical certifi-  
23 cate nor other explanation of his non-attendance.  
24 Now it is alleged for the first time that it is  
25 reasons of security which forbid his production here.

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22 time has appeared neither witness nor medical certifi-  
23 cate nor other explanation of his non-attendance.  
24 Now it is alleged for the first time that it is  
25 reasons of security which forbid his production here.

1 This long-continued flouting of the Tribunal's order  
2 requires, in our submission, the disregarding of  
3 TOPINAGA's testimony.

4 Finally, why this reluctance of the prosecut-  
5 ing nation to produce these witnesses? What do they  
6 fear as the result of their appearance in the wit-  
7 ness box? Five now harmless citizens of a defeated  
8 nation, stripped of all rank in an army which has  
9 ceased to be, prisoners of war who will be returned to  
10 the land of their captivity -- what peril to the  
11 security of a great state lurks in the suggestion that  
12 they appear here? The very repetition of these efforts  
13 to escape compliance with the barest demands of a fair  
14 trial emphasizes the importance of the Tribunal's seeing  
15 them, hearing them, observing their appearance under  
16 cross-examination. In no other wise can it be possible  
17 to judge the worth, if any, of their testimony.

18 The defense submits that the Tribunal's order  
19 of 17 June as already effective should stand.

20 ACTING PRESIDENT: Mr. Tavenner.

21 MR. TAVENNER: If the Tribunal please, I do  
22 not desire to re-argue any point covered in my first  
23 argument, but permission is respectfully requested to  
24 answer an entirely new point raised by defense counsel  
25 which needs clarification.



1           The point deals with the whole erroneous con-  
2           tention that the order of June 17 was a final decision  
3           for rejection of affidavits as to which the deponents  
4           were not produced for cross-examination. May I be  
5           permitted to make a rebuttal reply to this new point?

6           ACTING PRESIDENT: Go ahead.

7           MR. TAVENNER: Certainly counsel, who at his  
8           request was given from Thursday until today to prepare  
9           his reply, must know and understand that the order of  
10          June 17 was not final.

11          It is divided into two parts. The first part  
12          orders the prosecution to produce for cross-examination  
13          certain witnesses within a period of two months, or  
14          within such longer period as may on cause shown be  
15          approved by the Tribunal.

16          The second part is that, alternatively, that  
17          is, if the deponents are not produced, the prosecution  
18          shall give convincing reasons within the said period  
19          as to why they are not able to produce the witnesses.

20          The language of this alternative provision of  
21          the order is meaningless unless it means precisely what  
22          it says, namely, that the prosecution may be heard on  
23          the reasons why it is not able to produce certain wit-  
24          nesses, and it is incomprehensible that counsel should  
25          seriously contend otherwise.

1           The reasons why certain witnesses could not  
2 be produced were explained first in the chambers  
3 hearing of August 20, and were restated by Chief of  
4 Counsel on October 16, the day before the witnesses  
5 were to be produced. Mr. Furness, who, with Mr.  
6 Blakeney, has been taking the lead in the defense  
7 opposition to this matter, said, on October 16, that  
8 he assumed, and I quote, "If the Court is considering  
9 changing its order, it will hear arguments from the  
10 defense with regard to it," the Tribunal having already  
11 announced that it would consider the matter.

12           The position of the prosecution is that the  
13 combined action of the prosecution, defense, and the  
14 Tribunal told the running of the time element of the  
15 order, and therefore the order did not become final.  
16 If the explanation as to why the prosecution is not  
17 able to produce the five, or I should say, six wit-  
18 nesses is considered adequate, then, it is submitted,  
19 the affidavit should be considered in evidence, and  
20 the order of June 17 will have been fully complied  
21 with. If the Tribunal concludes that convincing  
22 reasons have not been given for the non-production of  
23 the six witnesses, nevertheless, the prosecution respect-  
24 fully submits, our Charter provisions and the Nuern-  
25 berg rules should be held to govern. The prosecution

1 has not contended for any stronger rule than that  
2 adopted at Nuernberg.

3 I desire to state that the name AKIKUSA, Shun  
4 was not given me at the time the original argument was  
5 prepared, and therefore his name was not included  
6 in my first discussion. His name should have been  
7 included among the list of affidavits. What has been  
8 said applies to him equally as to the others.

9 I think I should add, if the Tribunal please,  
10 that to the extent that my able friend deserted a  
11 reasoned argument and resorted to a plethora of abuse  
12 against prosecution counsel and against one of the  
13 participating nations his remarks and the manner in  
14 which he made them, although resented, should be  
15 passed over and not dignified by further answer.

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11 reasoned argument and resorted to a plethora of abuse  
12 against prosecution counsel and against one of the  
13 participating nations his remarks and the manner in  
14 which he made them, although resented, should be  
15 passed over and not dignified by further answer.

1 MR. BLAKENEY: May I have leave of the Tri-  
2 bunal to say a word in answer to this new question  
3 raised?

4 ACTING PRESIDENT: I do not think there is any-  
5 thing more that need be discussed on that; I think we  
6 have gone far enough.

7 The Tribunal will take the matter under con-  
8 sideration.

9 Mr. Brooks.

10 MR. BROOKS: Mr. President and Members of the  
11 Tribunal: On the order of proof I understand that the  
12 prosecution does not desire to cross-examine the wit-  
13 nesses at No. 1, 3, 8, 23 and 30 of the order of proof.

14 ACTING PRESIDENT: Just a little slower, will  
15 you please?

16 MR. BROOKS: No. 1, 3, 8, 23 and 30 of the  
17 order of proof. Also, the names of these witnesses,  
18 NAKAMURA, SOGO, TAKEDA, KATAKURA, MITARAI. The defense  
19 documents covered are No. 487, 1759, 2739, 2047 and  
20 2013. Of course the prosecution does not waive the  
21 right to make proper objections to the offering of the  
22 affidavits.

23 I also wish to state that since the taking of  
24 the affidavit the first witness, NAKAMURA, has died,  
25 and I will present a death certificate.



1           For the benefit of the marshal, I wish to state  
2 that I will be required to call the witness at No. 8 and  
3 23 to identify certain documents and answer a few  
4 additional questions for the defense.

5           Now, on behalf of MINAMI, Jiro, we will proceed  
6 directly with the presentation of evidence, without any  
7 opening statement.

8           First of all, we offer into evidence defense  
9 document 487, the affidavit of NAKAMURA, Kotaro, to-  
10 gether with defense document 2674, his death certificate.  
11 General NAKAMURA executed the affidavit in December last,  
12 but to our regret died in August this year.

13           ACTING PRESIDENT: Colonel Woolworth.

14           MR. WOOLWORTH: If the Tribunal please, the  
15 prosecution objects to the introduction of the first  
16 document, No. 487, on the ground that the deponent is not  
17 present for cross-examination, and furthermore, that it  
18 does not appear that the affidavit was executed in  
19 anticipation of death.  
20

21           MR. BROOKS: If the Tribunal please, these  
22 affidavits that have been taken for a long period of  
23 time, since 1946, were taken in anticipation that some-  
24 thing of this nature might happen. It is a customary  
25 practice, one that I have followed for years, of taking  
affidavits of every witness I intend to use, life being

so uncertain.

1           ACTING PRESIDENT: The objection is overruled.  
2 The Tribunal will take into consideration the fact that  
3 this witness has not been cross-examined.

4           MR. WOOLWORTH: If the Tribunal please, the  
5 prosecution objects to paragraph 3 of defense document  
6 487 on the ground that it is purely argumentative, and  
7 to that part of paragraph 4 on page 5, beginning at the  
8 word "Moreover" on the seventh line on page 5, to the  
9 end of the affidavit, on the same ground.

10          MR. BROOKS: If the Tribunal please, this  
11 affidavit by the Chief of the Personnel Bureau of the  
12 War Ministry, working under War Minister MINAMI,  
13 describes facts which will be corroborated by the evi-  
14 dence to be produced hereafter. In view of the allegation  
15 of the prosecution that MINAMI was opposed to the  
16 reduction of armament and intended to increase troops  
17 in Korea, it is necessary for us to show the financial  
18 situation of the army which was dealt with by MINAMI  
19 and we submit that General NAKAMURA's affidavit should  
20 be admitted as relevant material in these issues, and  
21 that this matter in paragraph 3 and the later part is  
22 not argumentative, that is, about the statements that  
23 have previously been raised in MINAMI's own case earlier,  
24 in the general phase.  
25

1       The retrenchment policy has been discussed  
about the movement in the latter part on page 5, the  
latter part of paragraph 4, and it was a matter with  
which MINAMI was greatly concerned.

5       As to the address made under paragraph 3, as to  
the current situation, this states about why certain  
7 newspapers criticized the statement and it states some  
8 of the reactions from the public in relation thereto,  
9 which is relevant and material, taking into considera-  
10 tion what the speech was about. Furthermore, it dis-  
11 cusses the intrigue among the various political parties  
12 and the grasping of one political party at an advantage  
13 that it might twist and distort against another member  
14 of a different political party, which will be brought  
15 out more clearly in future evidence.

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1           ACTING PRESIDENT: By a majority vote the  
2 objection is overruled and hereafter the prosecution  
3 is requested to put in all its objections at one time  
4 and not in parts.

5           Admitted on the usual terms.

6           CLERK OF THE COURT: Defense document 487  
7 will receive exhibit No. 3413; defense document 2674  
8 will receive exhibit No. 3413-A.

9           (Whereupon, the documents above  
10 referred to were marked defense exhibits  
11 No. 3413 and No. 3413-A, respectively, and  
12 received in evidence.)

13          MR. BROOKS: I shall not read the death  
14 certificate, exhibit 3413-A, but shall read the  
15 affidavit, exhibit 3413, commencing with paragraph  
16 2 on page 2:

17           "(2) In the 6th year of Showa I was working  
18 under War Minister MINAMI as Chief of the Personnel  
19 Bureau of the War Ministry. According to what I  
20 learned from my position, the WAKATSUKI Cabinet at that  
21 time was taking up a retrenchment policy as the  
22 previous HAMAGUCHI Cabinet had done and was trying  
23 to carry out administrative readjustment on a large  
24 scale to reduce the budget. In the latter part of July,  
25 Finance Minister INOUE presented a bill for the



1 revision of the Pension Law, in which he demanded a  
2 reduction and amendment to military men's pensions.  
3 This problem was carefully deliberated upon at the  
4 War Ministry. Reduction of military men's salaries  
5 was in the jurisdiction of the Military Affairs  
6 Bureau and the Accounts Bureau and was not under my  
7 jurisdiction, but I heard that it was reduced on a  
8 scale similar to those of civil officials. Since  
9 conditions were such, expenses necessary for the  
10 renovation of various systems in the army and materials  
11 of arms, etc., could not be supplied by government  
12 finance. Accordingly, there was no alternative but  
13 to curtail the expenses of the army itself and to use  
14 sums for only the most urgent items, for example,  
15 organizing an air force or mechanized unit by abolish-  
16 ing the cavalry. On the other hand, the WAKATSUKI Cab-  
17 inet was organized after the close of the Diet session.  
18 Therefore, although the reformation of the organiza-  
19 tion and the equipment of the army had been planned  
20 within the budget of the ex-Cabinet, the plan was  
21 suspended, owing to this change of the Cabinet.  
22 Japanese army equipment in those days was the same  
23 as that in the early stages of the 1st World War.  
24 Compared with those of other powers, it was very much  
25 out of date and extremely inferior.



1                   "(3) The Council of Division Commanders  
2 was, as an established custom, convened every year  
3 in Tokyo. They discussed on their business at the  
4 War Ministry, the Headquarters of the Army General  
5 Staff, and Inspectorate General of Military Education.  
6 The Council of 1931 took place on the 4th of August  
7 for the first time after MINAMI became the War  
8 Minister. In his address made in the council, there  
9 was a passage: 'As the current situation in Manchuria  
10 and Mongolia is, to my regret, growing worse, those  
11 who are engaged in military service should make in-  
12 creasingly greater efforts in military education and  
13 training, and to fulfil their duties.' Some newspapers  
14 criticized this statement saying that it inspired  
15 militarism or it meant political intervention by the  
16 military circles. It must be only natural, however,  
17 that the War Minister would demand Commanders of  
18 Divisions to understand the oversea situation and to  
19 wish to have them try their best in the education and  
20 training of the army itself. Moreover, I could not  
21 help but think that the reason why his address brought  
22 about great reaction from the public was, after all,  
23 due to a plot laid by a section of some political  
24 party who, taking advantage of the instability of the  
25 political situation in those days planned to overthrow

the government by tripping up a member of the Cabinet.

1           "(4) The news of an incident having broken  
2 out at Liutiaokou in Mukden on the night of the 18th  
3 of September 1931 and that Japanese and Chinese  
4 forces began fighting one another, was brought to me  
5 at 8 o'clock the following morning at the War Ministry.  
6

7           "Now a vital element in combat is the  
8 assignment of personnel, especially of officers.  
9 Concerning this incident, however, the fact that I,  
10 as Chief of the Personnel Bureau of the War Ministry,  
11 did not know anything about the personnel beforehand,  
12 that there was no preparation, and that the incident  
13 was truly unexpected to me makes it quite obvious  
14 that there was no previous plan. Moreover, as it was  
15 just at a time when the army itself was taking a re-  
16 trenchment policy, and that the organization and equip-  
17 ment of the army was very imperfect, it was not likely  
18 that Japan would take the initiative in bringing  
19 about trouble. Subsequently, a gap took place between  
20 the Cabinet's policy of 'Nonenlargement and local  
21 settlement of the incident' and the movements of the  
22 army situated there whose actions were governed by  
23 strategy and as a result of which the War Ministry,  
24 that is, the War Minister found himself in a very  
25 difficult situation. This was because strategic

1 operations were under the control of the Military  
2 Command of Chief of the General Staff, and outside  
3 the authority of the War Minister.

4 "December 22, 1946.

5 "Deponent, NAKAMURA, Kotaro."

6 The defense offers next in evidence defense  
7 document 286, a certificate issued by the First  
8 Demobilization Bureau concerning the reduction of  
9 officers' salary by virtue of Imperial Ordinance  
10 No. 103 of May 27, 1931. As mentioned in paragraph 2  
11 of NAKAMURA's affidavit just now read, this is  
12 further evidence that War Minister MINAMI carried out  
13 most faithfully a retrenchment policy as War Minister.

14 This is the part mentioned on page 2, the  
15 bill for revision of the pension law, page 2 of  
16 exhibit 3413.

17 I did not intend to read this exhibit,  
18 if your Honor please. It is referred to in the  
19 affidavit.

20 MR. WOOLWORTH: Prosecution objects to the  
21 introduction of defense document 286 on the ground it  
22 is irrelevant.

23 ACTING PRESIDENT: Overruled. Admitted on  
24 the usual terms.

25 CLERK OF THE COURT: Defense document 286

1 will receive exhibit No. 3414.

2 (Whereupon, the document above  
3 referred to was marked defense exhibit  
4 No. 3414 and received in evidence.)

5 MR. BROOKS: I shall not read the exhibit  
6 but only point out the fact that the reduction ranged  
7 from 5.8 percent for first lieutenants to 12 percent  
8 for generals.

9 As to MINAMI's policy of financial retrench-  
10 ment and armament reduction, I refer the Tribunal to  
11 the testimony of MINAMI, court record pages 19,776 and  
12 19,777, KOISO's testimony at court record page 32,206,  
13 and further evidence thereon will be given by KODAMA,  
14 whom we have called as a witness.

15 At this time the defense offers defense  
16 document 1759 in evidence, the affidavit of the  
17 witness SOGO, Shinji.

18 ACTING PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document 1759  
20 will receive exhibit No. 3415.

21 (Whereupon, the document above  
22 referred to was marked defense exhibit  
23 No. 3415 and received in evidence.)

24 MR. BROOKS: I shall read the exhibit  
25 commencing with the last paragraph on page 1:



1 "I worked as a director in the South  
2 Manchuria Railway Company for full four years from  
3 July 1930 to July 1934. About May in 1931,  
4 Mr. UCHIDA, Yasuya assumed the presidency of the  
5 company succeeding Mr. SENGOKU, Mitsugu who had  
6 retired from office on account of his illness. It  
7 was the custom then that, when a presidential change  
8 was made, the incoming President would invite separ-  
9 ately every Minister and his staff, and, in return,  
10 every Minister would invite the managing staff of the  
11 company. The Asahi Newspaper report on July 1, 1931,  
12 to the effect that War Minister MINAMI invited to his  
13 official residence President UCHIDA and all the direc-  
14 tors of the S.M.R. Company was nothing more than this  
15 customary return invitation. These conventional  
16 parties meant nothing but formalities."

17 This newspaper report referred to in the  
18 last paragraph of the affidavit is exhibit 2202-A,  
19 which was corrected at page 31,705 of the record. The  
20 exhibit, 2202-A, appears at record page 15,753. I  
21 also submit that this matter is also covered by  
22 KOISO's testimony at court record pages 32,215-32,216.

23 Defense offers in evidence defense document  
24 1966. It is an excerpt from exhibit 3038-A, Volume I  
25 of the Volumes for 1931 of the Secret Great Diary of



1 the Japanese War Ministry, being one of the originals  
2 recovered from Washington that has already been marked  
3 for identification.

4 This excerpt is a report dated August 19,  
5 1931, from the Commander of the Tokyo Military Police  
6 to the War Minister referring to a lecture given by  
7 the Commander to his subordinates. This lecture shows  
8 the fact that MINAMI was sincerely resolved to suppress  
9 any improper activities of young officers.

10 ACTING PRESIDENT: Admitted on the usual  
11 terms.

12 CLERK OF THE COURT: Defense document 1966  
13 will receive exhibit No. 3416.

14 (Whereupon, the document above  
15 referred to was marked defense exhibit  
16 No. 3416 and received in evidence.)

17 MR. BROOKS: I shall read exhibit 3416:

18 "Excerpt from the Secret Great Diary  
19 (Mitsu-Dai-Nikki), Volume I, 1931. War Ministry.

20 "Ken-Hi-Sho No. 64.

21 "To Mr. Jiro MINAMI, War Minister

22 "August 19, 1931.

23 "Report re Address of Instruction

24 "I beg to report that an address of instruc-  
25 tion, as per attached, was given by me on the policy

1 of guiding young officers in respect of their activities  
2 vis-a-vis the present situation.

3 "Toyozo TOYAMA (seal), Commander of  
4 Gendarmerie.

5 "(Secret) Instruction re Policy of Guiding  
6 Young Officers in respect of their activities  
7 vis-a-vis the Present Situation.

8 "As you officers are well aware, meetings  
9 and such like of young officers with the object of  
10 study and discussion of the Manchurian-Mongolian  
11 question and other problems of the present situation  
12 tend to overstep the scope of study and turn into  
13 concrete activities. Such activities are, however,  
14 apt to be exploited politically by outsiders, and  
15 it is to be feared that this might place the army in  
16 an awkward position. Furthermore, it is a breach of  
17 military discipline to make any proposition by forming  
18 horizontal combinations, contrary to the military  
19 system which provides authoritatively the relation  
20 for grades of command and subordination. It will also  
21 be a serious matter, should this tendency infect NCO's  
22 and men, undermining the foundation of the military  
23 constitution and inviting a thousand years' misfortune.

24 "It seems to me that the reason, why the  
25 said tendency absorbs the attention of young officers,

1 lies in the mistaken supposition that their  
2 activities are lead by the higher authorities of the  
3 army. Not only, however, is that not a fact, but the  
4 War Minister is firmly resolved to prohibit all these  
5 activities within the army. You must, therefore,  
6 cooperate fully with your superiors in the guidance  
7 of young officers so as not to have their futures  
8 spoilt. You must further endeavor to stave off any  
9 ill effects upon military discipline and prevent out-  
10 siders from political exploitation (of the army).

11 "Dated August 17, 1931.

12 "'Toyazo TOYAMA (seal), Commander of  
13 Gendarmerie.'"

14 Language section, at this time I go to No. 6  
15 on my order of proof.

16 ACTING PRESIDENT: We will recess for fifteen  
17 minutes.

18 (Whereupon, at 1045, a recess was  
19 taken until 1100, after which the proceedings  
20 were resumed as follows:)  
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MARSHAL OF THE COURT: The International  
1 Military Tribunal for the Far East is now resumed.

2 ACTING PRESIDENT: Captain Kraft.

3 LANGUAGE ARBITER (Captain Kraft): If the  
4 Tribunal please, we submit the following language  
5 correction: Reference exhibit 3409, page 7, second  
6 line from bottom and record page 32,748, line 7: Delete  
7 "in Nanking", substitute "at the front" and insert  
8 "victorious" between "a" and "New".

9 ACTING PRESIDENT: Captain Brooks.

10 MR. BROOKS: The defense at this time wishes to  
11 make a short explanation concerning telegraphic corres-  
12 pondence between the central authorities and the Kwan-  
13 tung Army in 1931, to which many references have been  
14 made in the course of this trial, but evidence as to the  
15 contents thereof has been dissallowed pending the search  
16 for the original documents or the best evidence thereof  
17 obtainable. After exhausting every possible means to  
18 locate and obtain such original documents on both sides  
19 of the Pacific, the situation to date is as follows:

21 Documents which would have been filed and  
22 found at the Japanese General Staff were all burned  
23 in August, 1945, as testified at court record page  
24 27,047 by MIYAMA, Yozo, Chief of Archives Section of  
25 the First Demobilization Bureau, and are, therefore,



not available.

1 Documents which would have been filed and found  
2 at the Japanese War Ministry were either burned in  
3 August, 1945, or delivered to the Occupation Army  
4 in January, 1946, as testified by the same witness  
5 (court record pages 27,045 to 27,046).  
6

7 Documents thus handed over to the Occupation  
8 Army, should be, to the best of our knowledge and belief,  
9 located either at the Central Intelligence Group,  
10 Washington (which took over documents formerly sent to  
11 the Washington Document Center) or at G-2 of the General  
12 Headquarters, Tokyo, held in the AFIS document section,  
13 or at the Document Section of the International Prosecu-  
14 tion Section, Tokyo.

15 We now present into evidence defense document  
16 No. 1922, a certificate under date of July 24, 1947,  
17 received from International Prosecution Document Division.

18 ACTING PRESIDENT: How about defense document  
19 57?

20 MR. PROOKS: We omitted that, your Honor. That  
21 was exhibit 57 by error. That is referred to later  
22 under 21.

23 ACTING PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document 1922 will  
25 receive exhibit No. 3417.



(Whereupon, the document above-referred  
was marked defense exhibit No. 3417 and received  
in evidence.)

MR. BROOKS: I shall read the exhibit, commencing with the word "subject", exhibit 3417:

"Subject: Certificate of Non-availability.

"In reply to the 'Order for the Production of  
Certain Documents necessary to the Defense of the accused,  
MINAMI, under the Charter' Court paper number 1040,  
dated 24 June 1947, I certify that none of the said  
documents are presently available in the Document  
Division of the International Prosecution Section, Tokyo.

"YALE MAXON, Chief, Document Division, IPS."

The defense offers next in evidence defense  
document No. 2524, a certificate under date of September  
5, 1947, received from G-2, General Headquarters (ATIS  
Document Section).

ACTING PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2524 will  
receive exhibit No. 3418.

(Whereupon, the document above referred  
to was marked defense exhibit 3418 and received  
in evidence.)

MR. BROOKS: I shall read exhibit 2418, commencing from the word "subject":

"Subject: Certificate of Non-Availability

"To: International Military Tribunal for the Far East.

"1. Reference: Court Order No. 1040, International Military Tribunal for the Far East, Sitting in Tokyo, Japan.

"2. This is to certify that none of the documents listed in reference Court Order are available in G-2 FLC. A thorough search has been made covering all potential sources.

"For the Assistant Chief of Staff, G-2:

"E. H. F. Svensson, Colonel, GSC, Director, WDI Division."

The defense offers also in evidence defense document No. 2641, a certificate under date of September 11, 1947, received from Central Intelligence Group, Washington, together with two letters attached thereto.

ACTING PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2641 will receive exhibit No. 3419.

(Whereupon, the document above referred to was marked defense exhibit No. 3419 and received in evidence.)

MR. BROOKS: I read the exhibit from page 3 to the end:

"1st Indorsement.

"11 September 1947.

"Office of Collection and Dissemination, CIG.

"To: Civil Affairs Division, WDSS, War Department, Washington 25, D.C.

"1 Search has been completed; and all available documents requested under Tribunal's Order Paper No. 963 have been transmitted to Civil Affairs Division.

"a. The following documents were transmitted on 26 June 1947:

"'The Secret Great Diary (Mitsu Dai Nikki)', 1931. Volume 1.

"'The Secret Great Diary (Mitsu Dai Nikki)', 1931, Volume 6.

"'File of Permanent Records, non-classified', 1931. 1 Volume.

"'File of unclassified correspondence and records dealing with Manchurian affairs', 1931, 2 volumes. Volumes 1 and 3.

"'File of Classified correspondence and records dealing with Manchurian Affairs', 1931. 1 Volume.

"The following documents were transmitted on 28 July 1947:

"'The Secret Great Diary', 1931. Volumes 2, 3, and 5.

1           "The following documents requested under  
2 Tribunal's Order paper No. 964 were transmitted on  
3 26 June 1947.

4           "'File of miscellaneous correspondence and  
5 records of War Ministry', 1940-1942, 1 bundle.

6           "3. The documents listed above comprise all of  
7 the documents this agency can furnish in response to the  
8 cited Papers."

9           The volumes just referred to in this certificate  
10 and amounting to a total of ten volumes, have been  
11 already introduced to the Tribunal for identification  
12 and marked as exhibits 3038A to 3038J. Unfortunately,  
13 these volumes so recovered out of the so-called "Great  
14 Diary" series of volumes do not contain the telegrams  
15 required by the Tribunal's order, since the volumes  
16 for certain months relative to MINAMI's time in office  
17 as War Minister in 1931 have not been sent and some of  
18 those sent are of a different series of volumes. At  
19 least sixteen volumes, if not more, are short of the  
20 number requested under the Tribunal's order.

21           In spite of this disadvantage, however, the  
22 defense has found several secondary proofs in these  
23 documents marked exhibit 3038A to 3038J which will  
24 corroborate our contention with regard to the contents  
25 of the original telegraphic correspondence in question.

1 We also have other secondary evidence thereof.

2 Now, according to Article 13, c (5) of the  
3 Charter, "a copy of a document or other secondary  
4 evidence of its contents may be admitted, if the original  
5 is not immediately available". Under the circumstances  
6 above mentioned, we desire to present secondary  
7 evidence by documents and witnesses in order to prove  
8 the contents of certain original telegrams relevant to  
9 MIHAMI's case.

10 The defense will call TAKIDA, Hisashi, a  
11 former lieutenant general, as the first witness for  
12 the identification of certain telegraphic copies of  
13 the aforesaid original telegrams.

14 MARSHALL OF THE COURT: Mr. President, the  
15 witness TAKIDA is in court. He has previously testi-  
16 fied before this Tribunal.

17 ACTING PRESIDENT: You are reminded that you  
18 are still under your former oath.  
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TAKEDA

DIRECT

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1 H I S A S H I T A K E D A, recalled as a witness  
2 on behalf of the defense, having been previously  
3 sworn, testified through Japanese interpreters  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q State your name and address, please.

8 A My name is TAKEDA, Hisashi. My address,  
9 Ina-machi, Komi-ina-gun, Nagano Prefecture.

10 MR. BROOKS: I request that defense document  
11 2739 be shown to the witness.

12 (Whereupon, a document was handed to  
13 the witness.)

14 Q Is this your affidavit?

15 A Yes.

16 Q Are the contents thereof true and correct?

17 A Yes.

18 MR. BROOKS: Defense document 2739 is offered  
19 in evidence, and I offer 2774 of note No. 10 here also.

20 ACTING PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Defense document 2739 will  
22 receive exhibit No. 3420. Defense document 2774 will  
23 receive exhibit No. 3420A.

24 (Whereupon, defense document No. 2739  
25 was marked defense exhibit No. 3420 and received

1 in evidence; defense document No. 2774 being  
2 marked defense exhibit No. 3420A and received  
3 in evidence.)

4 MR. BROOKS: Language Section, I will go to  
5 note No. 10 at this time.

6 THE MONITOR: Thank you, Mr. Brooks.

7 MR. BROOKS: For the purpose of showing that  
8 the witness was officially appointed as member of the  
9 committee for compilation of a history of the Manchur-  
10 ian Incident, I have offered in evidence defense  
11 document No. 2774, a certificate issued by the 1st  
12 Demobilization Bureau. I shall read the exhibit.

13 ACTING PRESIDENT: I haven't got it yet.  
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1 in evidence; defense document No. 2774 being  
2 marked defense exhibit No. 3420A and received  
3 in evidence.)

4 MR. BROOKS: Language Section, I will go to  
5 note No. 10 at this time.

6 THE MONITOR: Thank you, Mr. Brooks.

7 MR. BROOKS: For the purpose of showing that  
8 the witness was officially appointed as member of the  
9 committee for compilation of a history of the Manchur-  
10 ian Incident, I have offered in evidence defense  
11 document No. 2774, a certificate issued by the 1st  
12 Demobilization Bureau. I shall read the exhibit.

13 ACTING PRESIDENT: I haven't got it yet.  
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TAKEDA

DIRECT

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1           Mr. BROOKS: That is 3420-A, General. It is  
2 No. 10 in order.

3           I now read exhibit 3420-A:

4           "Certificate.

5           "TAKEDA, Hisashi.

6           "Date of birth: April 16, 1894.

7           "Place of residence: Ina-machi, Kami-ina-gun,  
8 Nagano Prefecture.

9           "It is hereby certified that the above-named  
10 was appointed as member of the General Staff and con-  
11 currently member of the Committee for Compilation of  
12 History of the Manchurian Incident on August 1, 1933,  
13 and that he was appointed as instructor of the Army  
14 Infantry School and concurrently member of the Research  
15 Department of the said school and thereby relieved, on  
16 March 1, 1938, from the membership of the Committee  
17 for Compilation of History of the Manchurian Incident.

18           Dated October 21, 1947

19           "MIYAMA, Yozo (seal) Chief of the Archives  
20 Section, First Demobilization Bureau."

21           I shall now read paragraph 2 of exhibit 3420  
22 to the end of the paragraph. That is No. 8, Language  
23 Section, 2739, exhibit 3420.

24           "From December 1930 to April 1932 I was a  
25 staff officer of the Kwantung Army and well acquainted



1 with telegraphic correspondence of confidential nature  
2 between the Kwantung Army and the central army author-  
3 ities at that time.

4 "After the outbreak of the Manchurian Incident,  
5 a document entitled 'The Manchurian Incident: The  
6 Relations of the Despatch and Withdrawal of the Army  
7 and Navy Forces (Summary and Particulars of Operations  
8 of the Kwantung Army)' was prepared by the Kwantung  
9 Army Headquarters on the basis of detailed reports on  
10 fightings, which were drafted by me from time to time.  
11 The document was distributed in March 1932 for the  
12 information of persons interested. I can identify  
13 the so-called IPS document #1641 (a copy consisting  
14 of 25 pages in Japanese) as an exact reproduction of a  
15 part of the said document. I can also identify the so-  
16 called defense document 1838 as an excerpt from IPS  
17 document 1641 and, consequently, as an excerpt from the  
18 said document.

19 "Further, I confirm that the contents of four  
20 telegrams quoted in defense document 1838 are the same  
21 as the original text of the telegrams received by the  
22 Kwantung Army headquarters on September 18 and 19,  
23 1931 from the Mukden Special Service Organ and the cen-  
24 tral army authorities respectively."  
25

I go now to note No. 9, Language Section.



1           At this time I request IPS document No. 1641  
2 (Japanese version), together with defense document  
3 No. 1838, be shown to the witness.

4           (Whereupon, documents were handed to  
5 the witness.)

6           MR. BROOKS: Are they the document and the  
7 excerpt thereof referred to in paragraph 2 of your  
8 affidavit just now read?

9           THE WITNESS: Yes.

10          MR. BROOKS: IPS document No. 1641 (Japanese  
11 version) is presented for identification only, and  
12 defense document 1838, an excerpt thereof, is offered  
13 in evidence.

14          ACTING PRESIDENT: Admitted on the usual  
15 terms.

16          CLERK OF THE COURT: IPS document 1641 will  
17 receive exhibit No. 3421 for identification only. De-  
18 fense document 1838 will receive exhibit No. 3421-A.

19          (Whereupon, IPS document No. 1641 was  
20 marked defense exhibit No. 3421 for identifica-  
21 tion, defense document No. 1838 being marked de-  
22 fense exhibit No. 3421-A and received in evidence.)

23          MR. BROOKS: I shall read exhibit 3421-A,  
24 defense document 1838, commencing from page 4, where  
25

1 is shown a certificate, that is IPS 1641.

2 "Certificate.

3 "12 August 1947.

4 "I, Yale Maxon, Chief of the Document Divi-  
5 sion, IPS, hereby certify that the Japanese original  
6 of IPS document 1641 is at present unavailable, and  
7 that to the best of my knowledge and belief, the at-  
8 tached pages of ditto copy processed, but never used  
9 by the prosecution, are an exact reproduction thereof."

10 Signed: "Yale Maxon."

11 Then coming back to page 1 I shall read from  
12 the place marked P.3.

13 "On September 18, at 11:46 p.m., the Chief of  
14 Staff of the Kwantung Army received the following  
15 telegram from the Mukden Special Service Organ (Tokumu-  
16 Kikan):

17 "A little after ten o'clock of the 18th re-  
18 ports were received that outrageous Chinese troops  
19 destroyed the South Manchurian Railway lines west  
20 of the big North Barracks north of Mukden, attacking  
21 the guards and clashing with the garrison troops. In  
22 view of this report, the 2d Infantry Battalion of the  
23 Mukden Independent Garrison is now on its way to the  
24 place of the clash."

25 "At 0:28 hours on the 19th, the Chief of Staff

1 received another telegram from the said Mukden Special  
2 Service Organ as follows:

3 "The Chinese troops at the North Army Bar-  
4 racks blew up the Manchurian Railway, the forces con-  
5 cerned number three or four companies of infantry.  
6 They have subsequently fled into their barracks. Since  
7 11 o'clock, our Hushipai company has been fighting  
8 against five or six hundred enemy troops in the North  
9 Barracks, and although we have occupied a corner of the  
10 place, the enemy is now increasing their machine guns  
11 and infantry guns. Our company is now fighting at  
12 odds, and First Lieutenant NODA has been severely  
13 wounded.'

14 "Page 8.

15 "At 6:00 p.m. of the same day (the 19th),"--  
16 that is the 19th of September 1931 --"the following  
17 telegram was received from the War Minister:

18 "Referring to the recent clash between  
19 Japanese and Chinese troops, the Imperial Government  
20 decided to make every effort to avoid extension of the  
21 situation, even though the Chinese troops must be  
22 blamed for producing its cause by destroying the South  
23 Manchurian Railway lines. The Cabinet requests you,  
24 therefore, to act in accordance with this principle.'

25 "Page 9.

1 "At the same time the following telegram was  
2 received from the Chief of General Staff:

3 "1. I believe that the resolutions and  
4 measures taken by the Commander of the Kwantung Army  
5 since the night of September 18th are appropriate to  
6 the occasion and have enhanced the prestige of the  
7 Japanese Army.

8 "2. In view of the Chinese attitude, etc.  
9 since the outbreak of the incident, the Cabinet has  
10 decided not to go beyond what is necessary in dealing  
11 with the incident. The Army should, therefore, conform  
12 with this principle in its action."

13 Referring back to note on No. 8, Language  
14 Section.

15 As to the circumstances under which these  
16 telegrams were sent and received I refer to testimonies  
17 of KATAKURA, Tadashi (Court Record pages 18,890;  
18 18,897-18,901), TAKEDA, Hisashi (Court Record pages  
19 19,325-19,327), KAWABE, Torashiro (Court Record page  
20 19,414), and MINAMI (Court Record pages 19,779-19,782)  
21 and KOISO (Court Record page 32,217).

22 I continue reading exhibit No. 3420, defense  
23 document No. 2739, from paragraph 3 on page 2.

24 "3. From August 1933 to April 1937 I was  
25 attached to the General Staff, Tokyo. During this period

1 I was ordered to compile a history of the Manchurian  
2 Incident. For such purpose I collected necessary  
3 materials from all available sources, and in particular  
4 made copies of original telegrams, then kept at the War  
5 Ministry and the General Staff, by using several as-  
6 sistants. All copies and manuscripts thus prepared  
7 were held together under my care as chief of compilers.  
8 My last manuscript was completed in March 1937 and sub-  
9 mitted to the superiors of the General Staff. I heard  
10 that it was printed after the transfer of my post to  
11 the Infantry School at Chiba in the said month, but  
12 have not received a copy. I believe that all the prints  
13 and manuscripts of the History of the Manchurian Inci-  
14 dent were burned at the General Staff at the time of  
15 the surrender.  
16

17 "4. In the course of the said work of com-  
18 pilation, the descriptive parts of manuscripts were  
19 frequently revised on account of various opinions of  
20 persons interested, while the text of telegrams re-  
21 mained constant. Hence, I used to cut out from an old  
22 draft the parts containing the quotations and stuck them  
23 onto a new draft." Quotations referred to there are  
24 the telegrams. "Even after the transfer of my post  
25 from the General Staff I had in my possession a con-  
siderable number of such copies of telegrams, but all



1 of them (so I thought until recently) were destroyed  
2 or lost during the period of almost continuous removals  
3 of my living quarters since 1937 and in the turmoil of  
4 war. Upon receiving, however, requests from the de-  
5 fense of IMTFE, I made a thorough search of my belong-  
6 ings and found copies of 16 telegrams.

7 "5. I identify defense document No. 2048 A to  
8 P as the said copies of 16 telegrams, the copies which  
9 were prepared by me in the manner aforesaid during the  
10 period between August 1933 and March 1937 in the course  
11 of my duty as Chief Compiler of the History of the Man-  
12 churian Incident. The copies are, therefore, in sun-  
13 dry forms, such as mimeographed (see A,B,C,D,F,G,L,  
14 M,N,O and P), and typewritten (see E and I), and pencil  
15 written (see H,J and K), according to respective drafts  
16 or manuscripts from which they were cut out.

17 "Referring to the telegrams in question, I  
18 hear that the records of the War Ministry and the Gen-  
19 eral Staff are not available. If that is the case,  
20 defense documents No. 2048 A-P are, to the best of my  
21 knowledge and belief, the only existing authentic  
22 copies as regards some of the secret telegraphic cor-  
23 respondence in the early stage of the Manchurian Inci-  
24 dent.  
25

"On this 14th day of October, 1947."

1 I will now go to note 11.

2 At this time I request defense documents 2048  
3 A to P be shown to the witness.

4 (Whereupon, documents were handed  
5 to the witness.)

6 MR. BROOKS: Are they the copies of telegrams  
7 referred to in paragraph 5 of your affidavit, exhibit  
8 No. 3420?

9 THE WITNESS: Yes.

10 MR. BROOKS: Defense documents 2048A to P are  
11 offered in evidence. I ask that each telegram be  
12 marked by separate letters A to P as I will be refer-  
13 ring to them individually.

14 ACTING PRESIDENT: Admitted on the usual  
15 terms.

16 CLERK OF THE COURT: Defense documents 2048A  
17 to P will receive exhibit No. 3422. Defense document  
18 2048-B will receive exhibit No. 3422-A.

19 MR. BROOKS: Just a second, please. Can you  
20 mark those 3422-A to P without marking the certificate?  
21 Otherwise we will get confused with the Language Sec-  
22 tion because that is the way I intend to refer to them.

23 CLERK OF THE COURT: I don't understand you.

24 MR. BROOKS: Mark the certificate 3422 and  
25 then identify each telegram of 2048 A to P as 3422 A

TAKEDA

DIRECT

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1 to P and that will cover all of them and save confusion.  
2 May that be done, your Honor?

3 CLERK OF THE COURT: I still don't understand  
4 what you are getting at.

5 MR. BROOKS: If the clerk can mark defense  
6 document 2048 A to P, the certificate will be given  
7 exhibit No. 3422 and each telegram from A to P be  
8 given 3422 A to 3422 P we will save confusion. Mark  
9 the certificate with the original number.

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1 CLERK OF THE COURT: Defense document 2048-A  
2 will receive exhibit No. 3422-A. Defense document 2048-B  
3 will receive exhibit No. 3422-B. Defense document  
4 2048-C will receive exhibit No. 3422-C. Defense docu-  
5 ment 2048-D will receive exhibit No. 3422-D. Defense  
6 document 2048-E will receive exhibit No. 3422-E. Defense  
7 document 2048-F will receive exhibit No. 3422-F. De-  
8 fense document 2048-G will receive exhibit No. 3422-G.  
9 Defense document 2048-H will receive exhibit No. 3422-H.  
10 Defense document 2048-I will receive exhibit No. 3422-I.  
11 Defense document 2048-J will receive exhibit No. 3422-J.  
12 Defense document 2048-K will receive exhibit No. 3422-K.  
13 Defense document 2048-L will receive exhibit No. 3422-L.  
14 Defense document 2048-M will receive exhibit No. 3422-M.  
15 Defense document 2048-N will receive exhibit No. 3422-N.  
16 Defense document 2048-O will receive exhibit No. 3422-O.  
17 Defense document 2048-P will receive exhibit No. 3422-P.

18 (Whereupon, the documents above  
19 referred to were marked defense exhibits  
20 No. 3422-A through 3422-P, respectively,  
21 and received in evidence.)

22 THE PRESIDENT: What number is the certificate?

23 MR. BROOKS: The certificate should be 3422,  
24 your Honor. It is the first one on the document.

25 (Thereupon, the certificate above

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1 CLERK OF THE COURT: Defense document 2048-A  
2 will receive exhibit No. 3422-A. Defense document 2048-B  
3 will receive exhibit No. 3422-B. Defense document  
4 2048-C will receive exhibit No. 3422-C. Defense docu-  
5 ment 2048-D will receive exhibit No. 3422-D. Defense  
6 document 2048-E will receive exhibit No. 3422-E. Defense  
7 document 2048-F will receive exhibit No. 3422-F. De-  
8 fense document 2048-G will receive exhibit No. 3422-G.  
9 Defense document 2048-H will receive exhibit No. 3422-H.  
10 Defense document 2048-I will receive exhibit No. 3422-I.  
11 Defense document 2048-J will receive exhibit No. 3422-J.  
12 Defense document 2048-K will receive exhibit No. 3422-K.  
13 Defense document 2048-L will receive exhibit No. 3422-L.  
14 Defense document 2048-M will receive exhibit No. 3422-M.  
15 Defense document 2048-N will receive exhibit No. 3422-N.  
16 Defense document 2048-O will receive exhibit No. 3422-O.  
17 Defense document 2048-P will receive exhibit No. 3422-P.

18 (Whereupon, the documents above  
19 referred to were marked defense exhibits  
20 No. 3422-A through 3422-P, respectively,  
21 and received in evidence.)

22 THE PRESIDENT: What number is the certificate?

23 MR. BROOKS: The certificate should be 3422,  
24 your Honor. It is the first one on the document.

25 (Thereupon, the certificate above



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1 CLERK OF THE COURT: Defense document 2048-A  
2 will receive exhibit No. 3422-A. Defense document 2048-B  
3 will receive exhibit No. 3422-B. Defense document  
4 2048-C will receive exhibit No. 3422-C. Defense docu-  
5 ment 2048-D will receive exhibit No. 3422-D. Defense  
6 document 2048-E will receive exhibit No. 3422-E. Defense  
7 document 2048-F will receive exhibit No. 3422-F. De-  
8 fense document 2048-G will receive exhibit No. 3422-G.  
9 Defense document 2048-H will receive exhibit No. 3422-H.  
10 Defense document 2048-I will receive exhibit No. 3422-I.  
11 Defense document 2048-J will receive exhibit No. 3422-J.  
12 Defense document 2048-K will receive exhibit No. 3422-K.  
13 Defense document 2048-L will receive exhibit No. 3422-L.  
14 Defense document 2048-M will receive exhibit No. 3422-M.  
15 Defense document 2048-N will receive exhibit No. 3422-N.  
16 Defense document 2048-O will receive exhibit No. 3422-O.  
17 Defense document 2048-P will receive exhibit No. 3422-P.

18 (Whereupon, the documents above  
19 referred to were marked defense exhibits  
20 No. 3422-A through 3422-P, respectively,  
21 and received in evidence.)

22 THE PRESIDENT: What number is the certificate?

23 MR. BROOKS: The certificate should be 3422,  
24 your Honor. It is the first one on the document.

25 (Whereupon, the certificate above

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1 CLERK OF THE COURT: Defense document 2048-A  
2 will receive exhibit No. 3422-A. Defense document 2048-B  
3 will receive exhibit No. 3422-B. Defense document  
4 2048-C will receive exhibit No. 3422-C. Defense docu-  
5 ment 2048-D will receive exhibit No. 3422-D. Defense  
6 document 2048-E will receive exhibit No. 3422-E. Defense  
7 document 2048-F will receive exhibit No. 3422-F. De-  
8 fense document 2048-G will receive exhibit No. 3422-G.  
9 Defense document 2048-H will receive exhibit No. 3422-H.  
10 Defense document 2048-I will receive exhibit No. 3422-I.  
11 Defense document 2048-J will receive exhibit No. 3422-J.  
12 Defense document 2048-K will receive exhibit No. 3422-K.  
13 Defense document 2048-L will receive exhibit No. 3422-L.  
14 Defense document 2048-M will receive exhibit No. 3422-M.  
15 Defense document 2048-N will receive exhibit No. 3422-N.  
16 Defense document 2048-O will receive exhibit No. 3422-O.  
17 Defense document 2048-P will receive exhibit No. 3422-P.

18 (Whereupon, the documents above  
19 referred to were marked defense exhibits  
20 No. 3422-A through 3422-P, respectively,  
21 and received in evidence.)

22 THE PRESIDENT: What number is the certificate?

23 MR. BROOKS: The certificate should be 3422,  
24 your Honor. It is the first one on the document.

25 (Whereupon, the certificate above

referred to was marked defense exhibit

No. 3422 and received in evidence.)

1 R. BROOKS: I shall read exhibit 3422-A,  
2  
3 omitting the certificate.

4 "September 19, 1931. From: Commander of Korean  
5 Army. To: Commander of Kwantung Army. Telegram No.:  
6 Cho-San-Po 26.

7 "As the Chief of Staff compelled me to suspend  
8 dispatch of reinforcements in spite of my repeated  
9 statements of opinion, the troops, other than air force,  
10 are temporarily stopped on the south side of Shingishu,  
11 awaiting further developments of the situation."

12 As to the circumstances mentioned in this  
13 telegram, I refer to KAJIABE's testimony, court record  
14 page 19,413, and KOISO's testimony at court record  
15 page 32,217 to 32,218; also that of KODAMA, who will  
16 be called later as a witness.

17 Also in this connection, I offer in evidence  
18 defense document No. 2096, an excerpt from exhibit  
19 3038-G. This is a letter from the Chief of General  
20 Staff to the War Minister, dated September 22, 1931,  
21 and will show, together with exhibit 3422-A, just now  
22 read, that the dispatch of troops abroad was absolutely  
23 under the jurisdiction of the Chief of General Staff  
24 and that MINAMI was only a recipient of a notice after  
25

the fact was accomplished.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Defense document 2096  
3 will receive exhibit No. 3423.

4 (Whereupon, the document above  
5 referred to was marked defense exhibit  
6 No. 3423 and received in evidence.)

7 MR. BROOKS: I shall read the exhibit.

8 "Excerpt from the Manchurian-Secret-Great-Diary.

9 "1931, Vol. 1. War Ministry.

10 "War Ministry Receipt No.: Riku-Man-Mitsu 1.  
11 General Staff Dispatch No.: San-Mitsu 406/1. To War  
12 Minister MINAMI, Jiro. Dated September 22, 1931.

13 "Notice re Delivery of Order for Dispatch of  
14 Forces to Manchuria.

15 "Notice is hereby given that referring to the  
16 dispatch of forces to Manchuria an order as per attached  
17 has been delivered to the authorities concerned.

18 "Signed, KANAYA, Hanzo, Chief of General Staff.

19 - - - - -  
20

21 "Top Secret. Rin-san-Mei No. 1. Order.

22 "The following units from the subordinate  
23 troops of the Commander of Korean Army shall be dis-  
24 patched to Manchuria and placed under the command of  
25 the Commander of Kwantung Army.



1 "Infantry, 1 brigade (less 1 battalion).  
2 Cavalry, 1 company. Field Artillery, 2 companies.  
3 Sappers, 1 company. Air Force, 2 companies. Signals,  
4 1 unit.

5 "The above-mentioned units shall enter the  
6 command of the Commander of Kwantung Army on their  
7 crossing of the Yalu River.

8 "The Chief of General Staff shall give  
9 instructions with regard to details.

10 "Dated September 22, 1931.

11 "By Imperial Command, Chief of General Staff,  
12 KANAYA, Hanzo.

13 "To Commander of Korean Army, HAYASHI, Senjuro.

14 "To Commander of Kwantung Army, HONJO, Shigeru."

15 As to the circumstances mentioned therein, I  
16 refer to MINAMI's testimony, court record page 19,782.

17 I now read exhibit 3422-B.

18 "September 20, 1931. From: Vice-Chief of  
19 General Staff. To: Chief of Staff of Kwantung Army.  
20 Telegram No. 27.

21 "1. After taking the general situation into  
22 consideration, the General Staff agreed to the policy  
23 (as per Telegram No. 15), decided upon at the cabinet  
24 meeting of the 19th, yesterday, as to how to dispose  
25 of the incident hereafter. Please understand, however,



1 that you are not restricted in taking necessary actions  
2 for accomplishing your proper duties or for self-defense  
3 of the army, should the change of circumstances so  
4 demand. Although I believe your measures are fully  
5 appropriate to meet the situation, it is hoped, all  
6 the more, that you will pay particular attention to  
7 the prestige of the Imperial Army, by precluding the  
8 Chinese troops and citizens from violating our military  
9 orders and by making our officers and men observe the  
10 most strict discipline, so that no one at home or  
11 abroad may find any cause to blame the army.

12 "2. As some officials in the Japanese dip-  
13 lomatic and S.M.R. circles in Manchuria are suspected  
14 of sending groundless reports about actions of the  
15 army, please endeavour to investigate their sources  
16 and seriously provide all means to eliminate such  
17 unpatriotic acts. I believe that the army should make  
18 a declaration of its grave resolution, in case unpatriotic  
19 schemes are still continued."

20 As to the circumstances mentioned in this  
21 telegram, I refer to KATAKURA's testimony, court record  
22 pages 18,934 to 18,935.

23 I now read exhibit No. 3422-C.

24 "September 22, 1931. From: War Minister.

25 To: Commander of Kwantung Army. Telegram No.: Riku 213.

1 that you are not restricted in taking necessary actions  
2 for accomplishing your proper duties or for self-defense  
3 of the army, should the change of circumstances so  
4 demand. Although I believe your measures are fully  
5 appropriate to meet the situation, it is hoped, all  
6 the more, that you will pay particular attention to  
7 the prestige of the Imperial Army, by precluding the  
8 Chinese troops and citizens from violating our military  
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10 most strict discipline, so that no one at home or  
11 abroad may find any cause to blame the army.

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14 of sending groundless reports about actions of the  
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17 unpatriotic acts. I believe that the army should make  
18 a declaration of its grave resolution, in case unpatriotic  
19 schemes are still continued."

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21 telegram, I refer to KATAKURA's testimony, court record  
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10 most strict discipline, so that no one at home or  
11 abroad may find any cause to blame the army.

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13 lomatic and S.M.R. circles in Manchuria are suspected  
14 of sending groundless reports about actions of the  
15 army, please endeavour to investigate their sources  
16 and seriously provide all means to eliminate such  
17 unpatriotic acts. I believe that the army should make  
18 a declaration of its grave resolution, in case unpatriotic  
19 schemes are still continued."

20 As to the circumstances mentioned in this  
21 telegram, I refer to KATAKURA's testimony, court record  
22 pages 18,934 to 18,935.

23 I now read exhibit No. 3422-C.

24 "September 22, 1931. From: War Minister.

25 To: Commander of Kwantung Army. Telegram No.: Riku 213.

1. "In view of the general situation at home  
2 and abroad, it is not proper for the army itself to  
3 carry out direct military administration. No time  
4 shall be lost in letting Chinese autonomous agencies,  
5 such as the General Chamber of Commerce, take charge  
6 thereof. The task of the army shall be confined only  
7 to negotiation and liaison with such agencies."

8 In order to substantiate that such a telegram  
9 was sent to the Kwantung Army, I offer for identifica-  
10 tion only the September-October issue of the Japan  
11 Chronicle, 1931.

12 CLERK OF THE COURT: The Japan Chronicle of  
13 September and October, 1931, will receive exhibit  
14 No. 3424 for identification only.

15 (Whereupon, the document above  
16 referred to was marked defense exhibit  
17 No. 3424 for identification.)

18 MR. BROOKS: And I offer in evidence defense  
19 document 2515, an excerpt from said Japan Chronicle  
20 of September 23, 1931.

21 MR. WOOLWORTH: If the Tribunal please, the  
22 prosecution objects to the introduction of the document.

23 ACTING PRESIDENT: Wait until we get copies,  
24 please.

25 MR. WOOLWORTH: The prosecution objects to

1. "In view of the general situation at home  
2 and abroad, it is not proper for the army itself to  
3 carry out direct military administration. No time  
4 shall be lost in letting Chinese autonomous agencies,  
5 such as the General Chamber of Commerce, take charge  
6 thereof. The task of the army shall be confined only  
7 to negotiation and liaison with such agencies."

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20 of September 23, 1931.

21 MR. WOOLWORTH: If the Tribunal please, the  
22 prosecution objects to the introduction of the document.

23 ACTING PRESIDENT: Wait until we get copies,  
24 please.

25 MR. WOOLWORTH: The prosecution objects to



1 the introduction of defense document No. 2515 as  
2 being of no probative value.

3 MR. BROOKS: I offer it, if your Honor pleases,  
4 merely to bear out that the telegram was sent, and  
5 that the contents are in line with what is quoted in  
6 this article, since it by itself would have very  
7 little probative value; but with the other telegram  
8 referring to the contents and this article also refer-  
9 ring to the contents, the two together do have pro-  
10 bative value and substantiate each other as to the  
11 contents that were sent at the time. It is very  
12 short and it is merely for corroboration and, of course,  
13 is secondary evidence.

14 ACTING PRESIDENT: By a majority of the  
15 Tribunal, the objection is sustained.

16 MR. BROOKS: As to the circumstances under  
17 which the telegram last received was sent, I refer  
18 the Court to KATAKURA's testimony, court record pages  
19 18,924 to 18,925.  
20  
21  
22  
23  
24  
25

1 the introduction of defense document No. 2515 as  
2 being of no probative value.

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11 contents that were sent at the time. It is very  
12 short and it is merely for corroboration and, of course,  
13 is secondary evidence.

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15 Tribunal, the objection is sustained.

16 MR. BROOKS: As to the circumstances under  
17 which the telegram last received was sent, I refer  
18 the Court to KATAKURA's testimony, court record pages  
19 18,924 to 18,925.  
20  
21  
22  
23  
24  
25

1 I now read exhibit 3422-D.

2 "Sept. 22nd, 1931.

3 "From: Chief of General Staff.

4 "To: Commander of Kwantung Army.

5 "Telegram No. 39.

6 "I approve the actions of your army up  
7 to now as timely and upholding the prestige of the  
8 country and the army. As to the future actions,  
9 however, you must maintain the present formation in  
10 line with your original duties, keeping a quiet  
11 watch with strict fairness, unless the situation takes  
12 an extraordinary sudden turn."

13 As to the circumstances mentioned in this  
14 telegram, I refer to KAWABE's testimony, court record  
15 pages 19,415-19,416.

16 I next read exhibit 3422-E.

17 "Sept. 23rd, 1931.

18 "From: Chief of Staff of Kwantung Army.

19 "To: Vice-Minister of War and Vice-Chief of  
20 General Staff.

21 "Telegram No. Kan-San 435.

22 "The present incident has absolutely no  
23 connection with Fushen case reported by Consul-General  
24 HAYASHI to the Foreign Minister. Please have no  
25 anxiety whatsoever. Details have been told to ANDO.

1 I now read exhibit 3422-D.

2 "Sept. 22nd, 1931.

3 "From: Chief of General Staff.

4 "To: Commander of Kwantung Army.

5 "Telegram No. 39.

6 "I approve the actions of your army up  
7 to now as timely and upholding the prestige of the  
8 country and the army. As to the future actions,  
9 however, you must maintain the present formation in  
10 line with your original duties, keeping a quiet  
11 watch with strict fairness, unless the situation takes  
12 an extraordinary sudden turn."

13 As to the circumstances mentioned in this  
14 telegram, I refer to KAWABE's testimony, court record  
15 pages 19,415-19,416.

16 I next read exhibit 3422-E.

17 "Sept. 23rd, 1931.

18 "From: Chief of Staff of Kwantung Army.

19 "To: Vice-Minister of War and Vice-Chief of  
20 General Staff.

21 "Telegram No. Kan-San 435.

22 "The present incident has absolutely no  
23 connection with Fushen case reported by Consul-General  
24 HAYASHI to the Foreign Minister. Please have no  
25 anxiety whatsoever. Details have been told to ANDO.

1 The above is specially reported."

2 As to the so-called Fushun case mentioned.  
3 in this telegram, I refer to testimonies of KATAKURA,  
4 court record pages 18,932-18,935, and ISHIWARA, Kanji,  
5 court record pages 22,140-22,142; 22,231-22,235.

6 I now read exhibits F, G, and H of 3422.

7 Exhibit 3422-F:

8 "Sept. 23rd, 1931.

9 "From: Chief of General Staff.

10 "To: Commander of Kwantung Army.

11 "Telegram No. 57.

12 "'No dispatch of troops shall be made to  
13 Harbin even in the event of sudden change of situa-  
14 tion.'"

15 I next read exhibit 3422-G:

16 "Sept. 23rd, 1931.

17 "From: Vice-Minister of War.

18 "To: Chief of Staff of Kwantung Army.

19 "Telegram No. Riku-Man 17.

20 "'The cabinet meeting has decided that no  
21 protection on the spot shall be given to Japanese  
22 residents in Harbin, and that they shall be evacuated  
23 therefrom, should the situation make it inevitable.'"

24 I next read exhibit 3422-H:

25 "Sept. 24th, 1941.



"From: War Minister.

"To: Commander of Kwantung Army.

"Telegram No. Riku-Man 20.

"'Even if the condition in Chientao becomes serious, the military force shall not be used, but prevention of the aggravation of the situation shall be by relying on police power.'"

As to the circumstances mention in these telegrams, I refer to testimonies of KATAKURA, court record pages 18,813-18,924; KAWABE, court record pages 19,416-19,417; and MINAMI, court record pages 19,787-19,788.

In this connection I offer in evidence defense document 1938, an excerpt from exhibit 3038-G, to show that Major-General HASHIMOTO, Toranosuke (not the accused HASHIMOTO) was sent to Manchuria by MINAMI's instructions of September 24, 1931, for the purpose of regulating the actions of the Kwantung Army in conformity with the policy of the government.

ACTING PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1938 will receive exhibit No. 3425.

(Whereupon, the document above referred to was marked defense exhibit No. 3425 and received in evidence.)

1 MR. BROOKS: I shall read exhibit 3425:

2 "Excerpt from the Manchurian Secret Great  
3 Diary.

4 "War Ministry.

5 "Vol. I, 1931.

6 "Received at the War Ministry: Riku-Man-  
7 Mitsu-Ju No. 13, Sept. 25.

8 "War Minister (MINAMI seal), Vice-Minister  
9 (SUGIYAMA seal).

10 "Department Chief (KOISO seal), Section  
11 Chief (NAGATA seal).

12 "Instruction given to Major-General  
13 HASHIMOTO by the War Minister." This is not the  
14 accused HASHIMOTO.

15 "'1. You will depart for Manchuria and  
16 take charge of the liaison between the central author-  
17 ities and the Kwantung Army Headquarters. For such  
18 purpose the following personnel will be attached to  
19 you:

20 "1 member of the General Staff.

21 "1 code officer.

22 "1 member of a section of the War Ministry.

23 "'2. Detailed instructions will be given  
24 by the Vice-Minister of War.'

25 "Riku-Kun No. 19 (instruction No.)

1 "Dated Sept. 24th, 1931.

2 "(Man-Mitsu No. 13, Sept. 25)

3 "Vice-Minister (SUGIYAMA seal);

4 "Department-Chief (KOISO seal);

5 "Section-Chief (NAGATA seal).....

6 "Instruction to Major-General HASHIMOTO from  
7 the Vice-Minister.

8 "1. Taking the policy of the Empire into  
9 careful consideration vis-a-vis actions of the  
10 Kwantung Army, you shall endeavor, in matters seriously  
11 affecting such policy, not to let the army act solely  
12 on its judgment of the immediate situation, but make  
13 it apply for instructions of the central authorities.

14 "2. You shall make the army conform with  
15 the intention of the central authorities with regard  
16 to its propaganda.'

17 "Riku-Man-Mitsu No. 7.

18 "Dated Sept. 24th, 1931."

19 As to the circumstances thereof, I refer to  
20 the testimony of MORISHIMA, Morito, court record  
21 page 3,091.

22 I will next read exhibit 3422-I.

23 "Sept. 25, 1931.

24 "From War Minister.

25 "To Commander of Kwantung Army.

"Telegram No. Riku-Man 31.

1           "By virtue of the governmental declara-  
2           tion"-- this is defense document 1947 on our order  
3           of proof, if your Honor pleases, this governmental  
4           declaration --"recently proclaimed, the course of  
5           the Empire's policy has become clear of itself.  
6

7           "At the cabinet meeting at this 25th, all  
8           the members agreed to make every possible effort,  
9           with unity and cooperation, for the execution of the  
10          purport of the said declaration. Now that the country  
11          is facing an emergency, it is absolutely necessary  
12          that both the diplomatic and military authorities  
13          on the spot should renounce minor differences for  
14          the greater common aim and do their duty by mutual  
15          cooperation for the interest of the country. The  
16          Foreign Minister has instructed the diplomatic organs  
17          on the spot to the same effect as above.  
18

19          "Such a necessity is felt even more at  
20          this time when an end shall be put to military actions  
21          and a turn for diplomatic negotiations be commenced."

22          At this time I ask that defense document  
23          1947 be shown to the witness.

24                 (Whereupon, a document was handed  
25                 to the witness.)

MR. WOOLWORTH: If the Tribunal please --



1           ACTING PRESIDENT: Please wait until we  
2 get the document so that we can see what it is.

3           MR. BROOKS: Has the witness been given  
4 defense document 1947?

5           Q   Is it the governmental declaration referred  
6 to in the telegram last read?

7           A   Yes.

8           MR. BROOKS: May it please the Tribunal,  
9 although defense document 1947 was rejected at the  
10 time of ITAGAKI's case on the ground that it should  
11 have been produced in the general phase, court record  
12 pages 30,058-30,060, we wish to offer it again in  
13 evidence for the three following reasons:

14               Firstly, MINAMI specifically mentions in  
15 his telegram just now read that he and other members  
16 of the cabinet will make every possible effort for the  
17 execution of the purport of the said document, that  
18 is to say, the governmental declaration of September  
19 24, 1931. According to the rule of this Tribunal,  
20 the governmental declaration referred to must be  
21 produced in evidence in such cases.

22               Secondly, the governmental declaration is  
23 not only an integral part of his top secret instruc-  
24 tion to the Commander of the Kwantung Army, but the  
25 basis of his actions in connection with the Manchurian



1 Incident. Unless the governmental declaration be  
2 admitted in evidence, there will be no standard to  
3 judge his conduct in the events that followed.

4 Thirdly, the governmental declaration itself  
5 was made by a unanimous resolution of MINAMI and  
6 other members of the cabinet. It is a public manifes-  
7 tation of MINAMI's attitude towards the incident,  
8 while the telegram above mentioned was a confidential  
9 expression thereof. Whether these two agree or not  
10 will have a vital importance in the defense of  
11 MINAMI. We respectfully submit, therefore, that  
12 defense document 1947 is more relevant and material  
13 to MINAMI's individual case than it was to the general  
14 phase and that now is the correct time to present the  
15 document into evidence, especially in relation to  
16 paragraphs 4 and 5, which are all I wish to read.

17 (Whereupon, Mr. Woolworth approached  
18 the lectern.)

19 ACTING PRESIDENT: Will you present your  
20 objections after lunch?

21 The court will recess until 1:30.

22 (Whereupon, at 1200, a recess was  
23 taken.)  
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## AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2  
3 MARSHAL OF THE COURT: The International  
4 Military Tribunal for the Far East is now resumed.

5  
6 ACTING PRESIDENT: I thought that Colonel  
7 Woolworth was about to put up his objections.

8 MR. COMYNS CARR: I will take the objection,  
9 if it please the Tribunal.

10 - - -

11 H I S A S H I T A K E D A, recalled as a witness  
12 on behalf of the defense, resumed the stand  
13 and testified through Japanese interpreters  
14 as follows:

15 MR. COMYNS CARR: If it please the Tribunal,  
16 in our submission, no good reason has been shown why  
17 the previous ruling of the Court on this document  
18 should be changed. It is sought to justify it by  
19 saying that this document is the document referred  
20 to in exhibit 3422-I. The document purports to be a  
21 statement issued after the Extraordinary Cabinet  
22 Meeting of September 24, 1931. The only cabinet  
23 meeting referred to in exhibit 3422-I is a meeting of  
24 September 25.  
25

It is true that the first paragraph of

exhibit 3422-I refers to "a declaration recently  
1 proclaimed," but one would have thought that if  
2 that referred to a declaration issued after the  
3 Cabinet Meeting of September 24, it would have said  
4 "yesterday" and not "recently."

5 In our submission, therefore, their attempt  
6 to link it up with the telegram fails and, in any  
7 event, the suggestion which was successfully put for-  
8 ward at page 30,060, namely, that it belonged, if  
9 anywhere, in the general phase, is equally valid now.  
10

11 MR. BROOKS: If the Tribunal please, I  
12 think the witness has confirmed the governmental  
13 declaration as the one referred to in the telegram,  
14 exhibit 3422-I.

15 As to the Cabinet Meeting of the 25th,  
16 referred to in exhibit 3422-I, in the second para-  
17 graph, that is another meeting which will be shown  
18 later.

19 The defense offers this document, 1947, for  
20 the purpose of corroborating the contents of the  
21 telegram of the War Minister embodied in exhibit  
22 3422-I. The telegram, exhibit 3422-I, says that,  
23 "By virtue of the governmental declaration recently  
24 proclaimed, the course of the Empire's policy has  
25 become clear of itself," and also that all members

1 of the Cabinet agreed to execute the purport of said  
2 declaration. This declaration is, therefore, the  
3 basis of a part of the War Minister's instruction to  
4 the Kwantung Army. This will show that MINAMI's  
5 confidential expression of his intention and the  
6 public announcement of the government were entirely  
7 in accord with each other. This will refute all the  
8 evidence produced by the prosecution alleging that  
9 MINAMI advocated a positive policy towards Manchuria  
10 and brought about the downfall of the Cabinet. The  
11 certificate shows that it is an official document  
12 of the Extraordinary Cabinet Meeting of the 24th of  
13 September, 1931. Paragraphs 4 and 5 thereof are not  
14 repetitious and set out the official declaration of  
15 the WAKATSUKI Cabinet, of which MINAMI was the War  
16 Minister, and I agree that the document would not  
17 be so relevant to ITAGAKI's case because he was not  
18 a member of this Cabinet, and he was not related to  
19 the telegrams and so forth connected therewith except  
20 very remotely.

21  
22 Therefore, I say that now is the correct  
23 time to present this document into evidence.

24 ACTING PRESIDENT: How do you identify that  
25 as the governmental declaration referred to in exhibit 3422-I?

1 MR. BROOKS: I had asked the witness that,  
2 your Honor, when I first started to offer it, if you  
3 recall.

4 ACTING PRESIDENT: The witness cannot  
5 identify this as that particular declaration.

6 MR. BROOKS: If the Court will remember,  
7 this witness compiled the Manchurian History and is  
8 familiar with the governmental declaration spoken of  
9 in this telegram itself. I submit that that is a  
10 matter that could be very well examined into on  
11 cross-examination if there is any doubt on the part  
12 of the prosecution on the same point.

13 ACTING PRESIDENT: By a majority vote, the  
14 objection is sustained.

15 Before you proceed to another matter, I  
16 want to read a notice that I overlooked.

17 With the Tribunal's permission, the accused  
18 TOGO will be absent from the courtroom the whole of  
19 the afternoon session conferring with his counsel.

20 MR. BROOKS: I will now read exhibit 3342-J:

21 "September 25th, 1931

22 "From: War Minister.

23 "To: Commander of Kwantung Army.

24 "Telegram No: Riku-Man 35.

25 "'It is strictly prohibited to have any



1 MR. BROOKS: I had asked the witness that,  
2 your Honor, when I first started to offer it, if you  
3 recall.

4 ACTING PRESIDENT: The witness cannot  
5 identify this as that particular declaration.

6 MR. BROOKS: If the Court will remember,  
7 this witness compiled the Manchurian History and is  
8 familiar with the governmental declaration spoken of  
9 in this telegram itself. I submit that that is a  
10 matter that could be very well examined into on  
11 cross-examination if there is any doubt on the part  
12 of the prosecution on the same point.

13 ACTING PRESIDENT: By a majority vote, the  
14 objection is sustained.

15 Before you proceed to another matter, I  
16 want to read a notice that I overlooked.

17 With the Tribunal's permission, the accused  
18 TOGO will be absent from the courtroom the whole of  
19 the afternoon session conferring with his counsel.

20 MR. BROOKS: I will now read exhibit 3342-J:

21 "September 25th, 1931

22 "From: War Minister.

23 "To: Commander of Kwantung Army.

24 "Telegram No: Riku-Man 35.

25 "'It is strictly prohibited to have any

1 connection with the movement for promoting a new  
2 regime in Manchuria.'"

3 In order to substantiate this telegram, the  
4 defense wishes first to present two documents for  
5 identification only. The first one is a "Collection  
6 of Documents referring to the League of Nations,"  
7 containing a speech of MATSUOKA, made on November,  
8 1932, at the League Council. This speech was pro-  
9 cessed as defense document No. 131.

10 The other is entitled "Observations of the  
11 Japanese Government on the Report of the Commission  
12 of Inquiry" and was processed as defense document No.  
13 189. Both documents were rejected previously on the  
14 ground that they contained arguments, court record  
15 pages 19,692 and 19,699. However, as I wish to sub-  
16 mit only a short excerpt from each of them, the  
17 originals are offered now for identification only.

18 CLERK OF THE COURT: Volume entitled,  
19 "Collection of Documents relating to the League of  
20 Nations, Volume III," will receive exhibit No. 3426  
21 for identification only.

22  
23 Volume entitled, "Observations of the Japa-  
24 nese Government on the Report of the Commission of  
25 Inquiry," will receive exhibit No. 3427 for identi-  
fication only.

TAKEDA

DIRECT

32,852

1 (Whereupon, the documents above  
2 referred to were marked defense exhibit  
3 No. 3426 and defense exhibit No. 3427,  
4 respectively, for identification.)  
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1 MR. BROOKS: I now offer in evidence defense  
2 document 2513, an excerpt from exhibit 3426, and I  
3 also offer defense document 2514, an excerpt from  
4 exhibit 3427.

5 We present these two rather similar documents,  
6 merely to substantiate the purpose and contents of  
7 MINAMI's instructions, embodied in the telegram just  
8 now read.

9 MR. WOOLWORTH: If the Tribunal please,  
10 prosecution objects to the introduction of these  
11 documents into evidence.

12 I invite the Court's attention to the fact  
13 that that document, exhibit 3427, was rejected by the  
14 Tribunal at record page 18,765 and again at 18,694.  
15 This exhibit, 3427, is merely an ex parte statement  
16 and has no probative value.

17 As for exhibit 3426, the fact that MATSUOKA  
18 made a speech in which he made certain statements is  
19 no proof of the statements having been made. This  
20 document was rejected by the Tribunal previously at  
21 page 19,700 of the record.

22 MR. BROOKS: If the Tribunal please, they will  
23 notice that both of these defense documents, 2514 and  
24 2513, are from two different sources and are quite  
25 similar and talk of similar contents.

1 In reply to the objection, I submit that  
2 there are 3 points to be argued:

3 Firstly, according to Cockles' Evidence  
4 (4th Edition, page 345), "There are, generally, no  
5 degrees of secondary evidence. When a party is at  
6 liberty to adduce secondary evidence, he may put in  
7 any description of the same he pleases."

8 The defense has shown that since MINAMI's  
9 first application on November 11, 1946 was heard in  
10 chambers on November 18, 1946, Paper No. 591 of  
11 December 3, 1946, a proper search has been made for  
12 the originals and that the originals are at least  
13 not immediately available in the meaning of Article 13,  
14 c (5) of the Charter. In such a case, I submit  
15 that any copy should be admitted for whatever probative  
16 value it may have. The question of the time when  
17 and the manner how a copy is made, is a matter of  
18 weight or credibility, but not a matter of admissibil-  
19 ity.

20 Secondly, Cockle states: "There can be  
21 no doubt that an attested copy is more satisfactory,  
22 and therefore, in that sense, better evidence than  
23 mere parol testimony; but whether it excludes parol  
24 testimony is a very different thing;" and also "If  
25 indeed the party giving such parol evidence appears



1 to have better secondary evidence in his power,  
2 which he does not produce, that is a fact to go to the  
3 jury, from which they might sometimes presume that  
4 the evidence kept back would be adverse to the party  
5 withholding it; but the law makes no distinction  
6 between one class of secondary evidence and another."  
7 Now, the defense has presented testimony of the  
8 witness as to the time and manner of the making of  
9 certain copies and as to the correctness of the  
10 contents thereof. Such copies constitute, therefore,  
11 an integral part of the said testimony which has  
12 been already received in evidence. In my submission,  
13 we cannot admit the one and reject the other, which  
14 is really better secondary evidence, without defeating  
15 the rule above-mentioned.

16 Next, I wish the Tribunal would bear with  
17 me for making another quotation from Cockle (Page 346).  
18 "Public documents are only provable by oral evidence  
19 when the originals are lost and copies are not  
20 obtainable." That is this case. The telegrams in  
21 question may be called public documents in the sense  
22 that they were despatched by army authorities and  
23 kept in Government files, but they were not public  
24 in the sense that the public had no access thereto.  
25 Even an official in charge of such files was not

1 to have better secondary evidence in his power,  
2 which he does not produce, that is a fact to go to the  
3 jury, from which they might sometimes presume that  
4 the evidence kept back would be adverse to the party  
5 withholding it; but the law makes no distinction  
6 between one class of secondary evidence and another."  
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8 witness as to the time and manner of the making of  
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11 an integral part of the said testimony which has  
12 been already received in evidence. In my submission,  
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20 obtainable." That is this case. The telegrams in  
21 question may be called public documents in the sense  
22 that they were despatched by army authorities and  
23 kept in Government files, but they were not public  
24 in the sense that the public had no access thereto.  
25 Even an official in charge of such files was not

1 to have better secondary evidence in his power,  
2 which he does not produce, that is a fact to go to the  
3 jury, from which they might sometimes presume that  
4 the evidence kept back would be adverse to the party  
5 withholding it; but the law makes no distinction  
6 between one class of secondary evidence and another."  
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10 contents thereof. Such copies constitute, therefore,  
11 an integral part of the said testimony which has  
12 been already received in evidence. In my submission,  
13 we cannot admit the one and reject the other, which  
14 is really better secondary evidence, without defeating  
15 the rule above-mentioned.

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17 me for making another quotation from Cockle (Page 346).  
18 "Public documents are only provable by oral evidence  
19 when the originals are lost and copies are not  
20 obtainable." That is this case. The telegrams in  
21 question may be called public documents in the sense  
22 that they were despatched by army authorities and  
23 kept in Government files, but they were not public  
24 in the sense that the public had no access thereto.  
25 Even an official in charge of such files was not

1 allowed to make a copy. In the present case, however,  
2 an extraordinary occasion arose, in which the witness,  
3 as compiler of the "History of the Manchurian Incident",  
4 was authorized to make as many copies as he liked.  
5 If any of the copies so made in the course of his duty  
6 remains today and is identified by him as such, is  
7 it not the next best evidence, in the absence of the  
8 original, and as authentic as any copy attested by a  
9 Government office? This is the present case and in  
10 the absence of the original, these statements from two  
11 different sources attest to what were not original  
12 telegrams and were made before one of the highest  
13 international tribunals of the time.

14 In conclusion, it is respectfully submitted  
15 that the whole matter rests upon the credibility of  
16 the witness, as to what he has previously testified  
17 to, which may be attacked by means of cross-examination,  
18 but not by the objection to the admissibility of  
19 evidence as to what was in the originals, not in copies,  
20 but in the originals.

21 As to relevancy and materiality of the  
22 telegrams embodied in these copies, it goes without  
23 saying that they have a great bearing on MINAMI's case.  
24 Although some of them show the attitude of the General  
25 Staff, which did not exactly concur with that of the



1 War Minister, the contrast itself will prove the true  
2 and difficult situation which faced MINAMI at his  
3 post.

4 Many matters are tied up in and woven among  
5 the documents referred to here now, some of which  
6 we have not been able to produce copies even of  
7 originals and must rely upon secondary evidence of  
8 this nature.

9 That is all, sir.

10 ACTING PRESIDENT: By a majority vote the  
11 objection as to both documents is sustained.

12 BY MR. BROOKS: (Continued)

13 Q Mr. Witness, I would like to ask you a  
14 question at this time. Have you any recollection as  
15 to the fact that the War Minister sent a telegraphic  
16 instruction on September 20, 1931, besides the one  
17 sent on September 25, prohibiting participation in the  
18 establishment of a new regime?

19 A In regards to this matter, there was only  
20 one telegram sent; that of the 25th of September.  
21 There are none besides this.

22 Q Can you explain why there is a difference  
23 of one day in the publication of the Japanese Govern-  
24 ment?

25 MR. WOOLWORTH: If the Tribunal please, I



TAKEDA

DIRECT

32,858

1 object to that question. The matter has already  
2 been ruled upon.

3 MR. BROOKS: I think the prosecution must  
4 be confused on that, your Honor.

5 ACTING PRESIDENT: Doesn't this refer to the  
6 two documents we just rejected?  
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MR. BROOKS: That is right, your Honor; I got the wrong one. I withdraw the question.

I now read exhibit No. 3422-K:

"Sept. 29th, 1931

"From: Vice-Minister of War.

"To : Chief of Staff of Kwantung Army.

"Telegram No. Riku-Man 50.

"Rumour circulates among Cabinet members that the Commander of Kwantung Army is connected with the movement for restoration of Emperor Hsuantung. By way of precaution, the Army shall be warned to have nothing to do therewith."

As to the circumstances mentioned in this telegram and the preceding telegram, exhibit No. 3422-J, I refer the Court to the testimony of KATAKURA (Court record page 18,974) and MINAMI (Court record pages 19,783 and 19,785).

In accordance with chronological order, the defense wishes to offer in evidence defense document No. 1937, an excerpt from exhibit No. 3038-G. This is a telegram from the Vice-Minister of War to the Chief of Staff of the Kwantung Army, dated October 1, 1931, and will corroborate the purport of telegram No. Riku 213, which was put in evidence as exhibit No. 3422-C.

ACTING PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document 1937  
2 will receive exhibit No. 3428.

3 (Whereupon, the document above re-  
4 ferred to was marked defense exhibit No.  
5 3428 and received in evidence.)

6 MR. BROOKS: I shall read exhibit No. 3428:

7 "Excerpt from the Manchurian-Secret-Great-  
8 Diary.

9 "Vol. I, 1931. War Ministry.

10 "Telegram (Code) from the Vice-Minister of  
11 War to the Chief of Staff, Kwantung Army.

12 "'Although it is reported that the Army may  
13 intend to enforce municipal administration in Chang-  
14 chung, avoid taking such a step by the Army itself, in  
15 compliance with the policy prescribed by Riku 213  
16 (T. N. -- Telegram No.) upon questions of this kind.'

17 "(Telegram No.) Riku-Man 55

18 "(Dated) Oct. 1st, 1931.

19 "11.00 A.M. (Seal)."

20 I will not read the certificate.

21 The defense would like to offer in evidence  
22 defense document No. 1965, which is also an excerpt from  
23 exhibit No. 3038-G. This is a telegram from the Vice-  
24 Minister of War to the Chief of Staff, Kwantung Army,  
25 dated November 11, 1931, and will show that the War

1 Minister had no knowledge why or for what duty Colonel  
2 DOIHARA was sent to Tientsin.

3 ACTING PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 1965 will  
5 receive exhibit No. 3429.

6 (Whereupon, the document above  
7 referred to was marked defense exhibit No.  
8 3429 and received in evidence.)

9 MR. BROOKS: I shall read exhibit 3429:

10 "Excerpt from the Manchurian-Secret-Great-  
11 Diary.

12 "Vol. I, 1931. War Ministry.

13 "Telegram code from the Vice-Minister of War  
14 to the Chief of Staff, Kwantung Army.

15 "'Happening to hear that Colonel DOIHARA is  
16 presumably carrying on activities in Tientsin, we should  
17 like to know what kind of duties he has been assigned  
18 and also what arrangement has been made between you and  
19 the China Garrison headquarters with regard to the scope  
20 of his work. Further, by way of precaution, please note  
21 that we are trusting the China Garrison to conduct all  
22 necessary business in the North China district from a  
23 standpoint of moral cooperation based on the mutual  
24 respect of duties among armies. In view of the prevail-  
25 ing situation, please inform us as to the duties of any



1 person who is hereafter sent to the North China district  
2 on important duty.'

3 "(Telegram No.) Riku-Man 177.

4 "(Dated November 11, 1931. 4.30 P.M. (seal))."

5 The circumstances mentioned in this telegram  
6 were testified by KATAKURA (Court record page 18,969).

7 I now refer the Tribunal to exhibit No. 286,  
8 telegram of November 1, 1931, from the Foreign Minister  
9 to Consul-General in Tientsin, wherein it is stated in  
10 paragraph 4 that MINAMI was opposed to the independence  
11 of Manchuria and to the restoration of Pu-Yi. I invite  
12 the Tribunal to read this in connection with exhibit No.  
13 299, a telegram of November 15, 1931, from War Minister  
14 MINAMI to the Commander of the Kwantung Army, wherein  
15 MINAMI cautioned General HONJO that the army should not  
16 meddle with the new regime movement in Manchuria but to  
17 leave such matters to the Foreign Ministry to handle.

18 I now read exhibit 3422-L:

19 "Nov. 16th, 1931.

20 "From: Chief of General Staff.

21 "To : Commander of Kwantung Army.

22 "Telegram No.: Rin-San-I-Mei 4.

23 "1. In case the offensive of Ma Chan-shan's  
24 army compels the outbreak of fighting, your army shall  
25 try to destroy the enemy by resolute actions, even though



1 you have to advance temporarily to the north of  
2 Tsitsihar.

3 "2. In view of the general situation, however,  
4 your army shall not make use of the Eastern Chinese  
5 Railway. Also, your actions in both directions towards  
6 east and west along the Eastern Chinese Railway shall  
7 be limited to the minimum really necessary for self-  
8 defense.

9 "3. Although it may be unavoidable to enter  
10 Tsitsihar temporarily on account of strategic necessity,  
11 your army is not permitted to occupy that place to con-  
12 trol North Manchuria. The main force of the troops  
13 used in that direction shall be concentrated as soon  
14 as possible to the east of Chengchiatun (inclusive of  
15 the town)."

16 I now read exhibit No. 3422-M:

17 "Nov. 24th, 1931.

18 "From: Chief of General Staff.

19 "To : Commander of Kwantung Army.

20 "Telegram No. 163.

21 "1. Take steps immediately, irrespective of  
22 any circumstance, to withdraw the division headquarters  
23 and main force to the area previously ordered, leaving  
24 in and around Tsitsihar only a unit composed more or  
25 less of one infantry regiment in line with the

1 established policy.

2 "2. The above-mentioned unit left behind must  
3 also be withdrawn within about two weeks."

4 I now read exhibit 3422-N:

5 "Nov. 27th, 1931.

6 "From: Chief of General Staff.

7 "To : Commander of Kwantung Army.

8 "Telegram No: Rin-San-I-Mei 6.

9 "'1. Your telegram Kan-San 360 was received.

10 "'2. Unless a new duty is assigned, your army  
11 shall not take any operational action at your own  
12 discretion to the west of the Liao River, the south  
13 of Chenghiatun vicinity and the south of the Cheng-  
14 chiatun-Tungliao Railway for the reinforcement of the  
15 China Garrison."

16 As to the circumstances mentioned in these  
17 telegrams, I refer to testimonies of KATAKURA (Court  
18 record page 19,351) and KAWABE (Court record pages  
19 19,417, 19,418-19,419). As to the last telegram in  
20 particular, that is, exhibit No. 3422-N, I refer to  
21 MINAMI's testimony (Court record pages 19,788 - 19,789)  
22 and KOISO's testimony (Court record page 32,219) and to  
23 exhibit No. 57, the Lytton Report, at page 77, where it  
24 is stated that on November 29th, to the great surprise  
25 of the Chinese, the Japanese forces were withdrawn to  
Hsinmin.

1 To continue reading exhibit No. 3422-0:

2 "Jan. 27th, 1932.

3 "From: Commander of Kwantung Army.

4 "To: War Minister and Chief of General Staff.

5 "Telegram No.: Kan-san 355.

6 "'Following the northern expedition of the  
7 Kirin Army, the former Ting Chao Army looted Fuchiatican,  
8 and fighting broke out today centering around the  
9 Japanese cemetery and the airfield of Harbin. Our air  
10 officer was shot. Harbin is becoming disorderly. Tak-  
11 ing these circumstances into consideration, the Kwantung  
12 Army wishes to accomplish the protection of our resi-  
13 dents by dispatching a unit composed of not more than  
14 two infantry battalions, in case hostilities are likely  
15 to extend to the city of Harbin. Kindly give your ap-  
16 proval in advance.'"

17 I now read exhibit 3422-P:

18 "Jan. 28th, 1932.

19 "From: Vice-Chief of General Staff.

20 "To : Commander of Kwantung Army.

21  
22 "'Your telegram Kan-San 355 was received. In  
23 view of the rampancy of armed bandits in North Man-  
24 churia and for the purpose of reinforcing our forces  
25 there, the Chief of General Staff approves the dispatch  
of troops to Harbin as mentioned in your telegram.'"

1           As to the circumstances mentioned in these  
2           telegrams, I refer to testimonies of KATAKURA (Court  
3           record pages 18,994 - 18,995) and KAWABE (Court record  
4           pages 19,422 - 19,423), and KOISO (Court record pages  
5           32,320 - 32,221) and wish to call to the attention of the  
6           Tribunal that MINAMI was no longer the War Minister at  
7           that time.

8           The prosecution may now cross-examine.

9           MR. WOOLWORTH: No cross-examination of this  
10          witness.

11          MR. BROOKS: May the witness be excused on the  
12          usual terms?

13          ACTING PRESIDENT: He is excused accordingly.

14                   (Whereupon, the witness was ex-  
15          cused.)  
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1 MR. BROOKS: 23, Language Section.

2 Now the defense would like to call

3 KATAKURA, Tadashi as a witness.

4 ACTING PRESIDENT: Wasn't this one of the  
5 witnesses the prosecution isn't going to cross-examine?

6 MR. BROOKS: I have some additional documents  
7 I wish to present.

8 This witness has been previously sworn.

9 T A D A S H I K A T A K U R A, recalled as a  
10 witness in behalf of the defense, having been  
11 previously sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q State your name and address.

15 A My name is KATAKURA, Tadashi. My present  
16 address is No. 2658, Kami-meguro-gochome, Meguro-ku,  
17 Tokyo.

18 ACTING PRESIDENT: I want to remind you,  
19 Witness, that you are still under oath.

20 MR. BROOKS: I ask that defense document  
21 2047 be shown to the witness.

22 (Thereupon, a document was shown  
23 to the witness.)

24 Q Is that your affidavit?

25 A Yes.



1 Q Are the contents thereof true and correct?

2 A Yes, true and correct.

3 MR. BROOKS: I offer defense document 2047  
4 in evidence.

5 ACTING PRESIDENT: Admitted on the usual  
6 terms.

7 CLERK OF THE COURT: Defense document 2047  
8 will receive exhibit No. 3430.

9 (Whereupon, the document above  
10 referred to was marked defense exhibit  
11 3430 and received in evidence.)

12 MR. BROOKS: I shall read the exhibit,  
13 starting from paragraph 2.

14 "2. I was attached to the Kwantung Army  
15 headquarters from August, 1930, to August, 1932, and  
16 connected specially with the handling of secret tele-  
17 grams. The copies of telegrams attached hereto are  
18 truly the same as those telegrams which were handled  
19 by me at that time.

20 "3. Among the said copies of telegrams  
21 attached hereto, the incoming ones at the Kwantung  
22 Army headquarters addressed to the Commander HONJO  
23 or the Chief of Staff MIYAKO were, first of all, handed  
24 to me by the Code Section, and then submitted to the  
25 said superior concerned, after my reading aloud to him

1 the gist thereof. The outgoing telegrams from the  
2 Commander or the Chief of Staff of the Kwantung Army  
3 to the central army authorities were, first of all,  
4 drafted by me under the order of the said superior  
5 concerned. Upon his approval of my draft, I had it  
6 translated into code by the Code Section, and then the  
7 dispatch was made."

8 I ask that exhibits 3422-A to P be shown  
9 to the witness. Those are defense documents 2048-A  
10 to P.

11 ("Thereupon, documents were  
12 handed to the witness.)

13 Q Are those the telegrams referred to in  
14 paragraph 2 and 3 of your affidavit?

15 A (There was no interpreted response.)

16 Q You have carefully examined them and con-  
17 sidered them as copies of the telegrams originally  
18 handled by you, is that correct?

19 A These are the very documents which I men-  
20 tion in my affidavit.

21 Q In paragraph 2 you mention the copies of  
22 telegrams attached. These are those which you are  
23 referring to there, is that correct?

24 A Yes.

25 MR. BROOKS: The prosecution may cross-examine.

1 MR. WOOLWORTH: No cross-examination of this  
2 witness, if the Tribunal please.

3 MR. BROOKS: May the witness be excused on  
4 the usual terms?

5 ACTING PRESIDENT: He is excused accord-  
6 ingly.

7 (Whereupon the witness was excused.)

8 MR. BROOKS: The defense requests that  
9 KODAMA, Tomeo be called as the next witness.

10 MARSHAL OF THE COURT: Mr. President, the  
11 witness KODAMA, Tomeo is in court. He has previously  
12 testified before the Tribunal.

13 T O M E O K O D A M A, called as a witness on  
14 behalf of the defense, testified as follows:

15 ACTING PRESIDENT: You are warned that you  
16 are still under oath, Witness.

17 BY MR. BROOKS:

18 Q Mr. Witness, have you ever testified in this  
19 court before?  
20

21 A No, I have not.

22 MR. BROOKS: I didn't think he had, your  
23 Honor.

24 (Whereupon, the witness was duly sworn.)  
25

## DIRECT EXAMINATION

1 BY MR. BROOKS:

2 Q State your name and address, please.

3 A My name is KODAMA, Tomeo. My address is  
4 31 Kitazawa-machi, 2-chome, Setagaya-ku, Tokyo.

5 MR. BROOKS: I ask that defense document 1760  
6 (revised) be shown to the witness.

7 (Whereupon, a document was handed  
8 to the witness.)

9 Q Is that your affidavit?

10 A Yes.

11 Q Are the contents true and correct?

12 A Yes.

13 MR. BROOKS: I offer defense document 1760  
14 in evidence.

15 MR. WOOLWORTH: If the Tribunal please, the  
16 prosecution objects to certain parts of this affi-  
17 davit, beginning with the fifth line of paragraph 3  
18 and extending to the end of that paragraph. Whether  
19 it was the policy of General MINAMI or not as stated,  
20 reference is made to exhibit 2022-A, which speaks for  
21 itself.  
22

23 I further object to paragraph 5 of the affi-  
24 davit, as it is repetitious, a re-statement of matters  
25 which are contained in regulations and laws which are



already in evidence.

1 I further object to that part of paragraph  
2 6 beginning, in the sixth line, with the words "Com-  
3 mander HAYASHI," as stating a conclusion not within  
4 the testimonial knowledge of the witness.

5 I further object to the last two sentences of  
6 paragraph 9 on page 5, beginning with the words "Chief  
7 of General Staff." The order is the best evidence.

8 MR. BROOKS: As to that last remark, your  
9 Honor, of course you realize this is secondary evidence  
10 I am offering. The original is not available, as I  
11 have shown by previous evidence. That is why I am  
12 offering testimony by witnesses, to cover part of this  
13 material.  
14

15 Now, as to paragraph 3, the comment there  
16 connects the testimony of this witness, what he is try-  
17 ing to say, tying in this testimony with exhibit 2022-A,  
18 and explains the statement on what is being talked about.  
19 That is why I refer to it, so that the Court will under-  
20 stand what the exhibit is about.

21 The matters referred to in paragraph 5 are  
22 briefly summarizing evidence of the general phase as  
23 to our contention about responsibility, and it is  
24 therefore calling attention to other evidence which  
25 is gone into in greater detail in the general phase,



1 bringing out certain points in order to make the  
2 rest of the evidence relate to it and make sense.

3 As to paragraph 7, what Commander HAYASHI  
4 judged, this witness was the Chief of Staff and he was  
5 in a position to know the judgment of his commander  
6 and to testify as to what he did and as to the reasons  
7 therefor.

8 As to the last objection. I think I covered  
9 that.

10 ACTING PRESIDENT: By a majority vote the  
11 objection as to paragraphs 3 and 5 are sustained.  
12 Otherwise the objection is overruled.  
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1 MR. BROOKS: Paragraph 3 starts with "In  
2 the spring of 1931" and extends to the end of the  
3 paragraph, is that right, your Honor, and all of para-  
4 graph 5?

5 CLERK OF THE COURT: Defense document 1760  
6 revised will receive exhibit No. 3431.

7 (Whereupon, the document above  
8 referred to was marked defense exhibit No.  
9 3431 and received in evidence.)

10 MR. BROOKS: I will not read the balance of  
11 paragraph 3 because, by itself, it will not be of any  
12 significance. But I shall read the exhibit starting  
13 from paragraph 2, skipping paragraphs 3 and 5, and  
14 will stop with paragraph 7, if the language section  
15 please, for a brief question.

16 I read from paragraph 2:

17 "From December, 1930 to August, 1933 I was  
18 the Chief of Staff of the Korean Army as Major-  
19 General."

20 Skipping to paragraph 4:

21 "On the night of September 18, 1931, as soon  
22 as the Korean Army received an urgent request for re-  
23 inforcement from the Kwantung Army, HAYAS II, Commander  
24 of Korean Army, organized a combined brigade under  
25 Major-General KAMURA and ordered him to proceed to

1 the Korea-Manchurian border, thereafter reporting the  
2 step taken to the Chief of General Staff and to the  
3 Kwantung Army.

4 "6. On September 19, about noon, a tele-  
5 graphic order was received from the Chief of General  
6 Staff that the Korean Army unit should not cross the  
7 border without Imperial sanction. Commander HAYASHI,  
8 in conformity with this order, made the KAMURA Brig-  
9 ade stop within the Korean border south of Shingishu.  
10 The measure was at once cabled to the Commander of  
11 the Kwantung Army by telegram Cho-San-Po No. 26. At  
12 that time, the wireless service of the Korean Army  
13 was in the test period, and it was out of order.  
14 Except the above-mentioned communication, no news  
15 was received from the General Staff through the State  
16 Cable Service, and the Korean Army found itself al-  
17 together isolated from the central authorities."

18 Language section, I go to Note 24. At this  
19 time I request exhibit 3422A be shown to the witness.  
20 That is defense document 2048A.

21  
22 (Whereupon, a document was handed  
23 to the witness.)

24 BY MR. BROOKS (Continued):

25 Q Now, are the contents of this copy of the  
telegram marked A on the second page of the Japanese

1 the Korea-Manchurian border, thereafter reporting the  
2 step taken to the Chief of General Staff and to the  
3 Kwantung Army.

4 "6. On September 19, about noon, a tele-  
5 graphic order was received from the Chief of General  
6 Staff that the Korean Army unit should not cross the  
7 border without Imperial sanction. Commander HAYASHI,  
8 in conformity with this order, made the KAMURA Brig-  
9 ade stop within the Korean border south of Shingishu.  
10 The measure was at once cabled to the Commander of  
11 the Kwantung Army by telegram Cho-San-Po No. 26. At  
12 that time, the wireless service of the Korean Army  
13 was in the test period, and it was out of order.  
14 Except the above-mentioned communication, no news  
15 was received from the General Staff through the State  
16 Cable Service, and the Korean Army found itself al-  
17 together isolated from the central authorities."

18 Language section, I go to Note 24. At this  
19 time I request exhibit 3422A be shown to the witness.  
20 That is defense document 2048A.

21 (Whereupon, a document was handed  
22 to the witness.)

23 BY MR. BROOKS (Continued):

24 Q Now, are the contents of this copy of the  
25 telegram marked A on the second page of the Japanese

1 the Korea-Manchurian border, thereafter reporting the  
2 step taken to the Chief of General Staff and to the  
3 Kwantung Army.

4 "6. On September 19, about noon, a tele-  
5 graphic order was received from the Chief of General  
6 Staff that the Korean Army unit should not cross the  
7 border without Imperial sanction. Commander HAYASHI,  
8 in conformity with this order, made the KAMURA Brig-  
9 ade stop within the Korean border south of Shingishu.  
10 The measure was at once cabled to the Commander of  
11 the Kwantung Army by telegram Cho-San-Po No. 26. At  
12 that time, the wireless service of the Korean Army  
13 was in the test period, and it was out of order.  
14 Except the above-mentioned communication, no news  
15 was received from the General Staff through the State  
16 Cable Service, and the Korean Army found itself al-  
17 together isolated from the central authorities."

18 Language section, I go to Note 24. At this  
19 time I request exhibit 3422A be shown to the witness.  
20 That is defense document 2048A.

21 (Whereupon, a document was handed  
22 to the witness.)

23 BY MR. BROOKS (Continued):

24 Q Now, are the contents of this copy of the  
25 telegram marked A on the second page of the Japanese



1 original the same as the contents of the telegram of  
2 the Korean Army referred to on page 3 in paragraph  
3 6 of your affidavit?

4 A I will have to change my glasses. I can't  
5 tell just yet.

6 Q All right.

7 A May I have the question?

8 Q In the part marked A, are the contents of  
9 this copy of the telegram marked A on the second  
10 page of the Japanese original the same as the con-  
11 tents of the telegram of the Korean Army referred to  
12 on page 3 in paragraph 6 of your affidavit? It may  
13 be on the first page of that. I may have an error  
14 here. That may be on the first page marked A.

15 A The telegrams are identical.

16 Q Oh, did you find it?

17 A Yes.

18 MR. BROOKS: And the telegrams are identi-  
19 cal. I continue reading defense document 1760,  
20 exhibit 3431 from paragraph 7 to the end:

21 "On September 21, about 10 a.m., another  
22 telegram was received from the Kwantung Army urging  
23 the Korean Army to send reinforcements, as not a  
24 single soldier remained in Mukden, following a de-  
25 spatch of the Second Division to Kirin. Commander

1 HAYASHI judged that the Kwantung Army, being so small  
2 in number, might have been pressed into a desperate  
3 situation, and that the lives and properties of  
4 the Japanese residents might be at stake. He was  
5 convinced that a reinforcement from Korea without a  
6 moment's delay was absolutely necessary. Making up  
7 his mind to carry out the crossing of the border on  
8 his own responsibility, he ordered the KAMURA Com-  
9 bined Brigade to proceed to Mukden in the afternoon  
10 of September 21.

11 ¶8. Although the act of Commander HAYASHI  
12 without approval from his superior was based upon  
13 his judgment of circumstances as mentioned above and  
14 was ratified by Imperial sanction on September 22,  
15 it is also a fact that he exceeded his authority.  
16 Hence, both Commander HAYASHI and I, as his Chief of  
17 Staff, submitted formal enquiries to the central  
18 authorities whether or not we should resign (T.N. --  
19 This enquiry is called 'Shintai-ukagai' in Japanese),  
20 and expressed our penitence. A decision was later  
21 made towards Commander HAYASHI and a written notice  
22 was delivered to him. When Commander HAYASHI showed  
23 it to me, I found it to be an Imperial reprimand is-  
24 sued through the Chief of General Staff, containing  
25 the words 'Warned for future action.' I, however,

1 received no punishment under any form.

2 "9. As the result of the Mukden Incident,  
3 there were disturbances in Chientao district, which  
4 is adjacent to North Korea. On or around September  
5 24, 1931 a telegram was received from War Minister  
6 MINAMI to the effect that no despatch of troops  
7 should be made to the said district, but that the  
8 peace and order be maintained by the consular police  
9 previously stationed there. (The purport of this  
10 telegram is the same as telegram Riku-Nan #20 of  
11 September 24, 1931, from the War Minister to the  
12 Commander of Korean Army). Towards the end of Oc-  
13 tober, the central authorities took notice of the  
14 situation which became too difficult for the police  
15 alone to deal with. The Chief of General Staff is-  
16 sued an order under Imperial Sanction and despatched  
17 a unit to Kyokushigai in Chientao. After several  
18 months the unit was withdrawn when peace and order  
19 were restored.

20 "On the 7th day of April, 1947."

21 Referring back to Note 24, on the bottom of  
22 page 4 in the English, the words "From the War  
23 Minister to the Commander of the Korean Army" should  
24 be the "Kwantung Army," and I ask that the language  
25 section check that. I understand, in Japanese it is

1 "Kwantung Army," and here it has been put in "Korean  
2 Army." That's in exhibit 3431. The first word on  
3 the bottom of page 4 of the last line should read  
4 "Kwantung Army" instead of "Korean Army."

5 I request that exhibit 3422H be shown to  
6 the witness. This is defense document 2048H.

7 (Whereupon, a document was handed  
8 to the witness.)

9 Q Now, are the contents of this copy of the  
10 telegram marked H on the 9th page of the Japanese  
11 original the same as the contents of the telegram  
12 of the War Minister referred to in paragraph 9 of  
13 your affidavit?

14 A They are the same telegrams.

15 MR. BROOKS: Prosecution may cross-examine.

16 MR. WOOLWORTH: If the Tribunal please.

17 ACTING PRESIDENT: Colonel Woolworth.

18 CROSS-EXAMINATION

19 BY MR. WOOLWORTH:

20 Q Witness, I refer you to exhibit 3422A and  
21 ask that a copy be shown the witness.

22 (Whereupon, a document was handed  
23 to the witness.)

24 Will you please tell the Tribunal what be-  
25 came of the air force which is referred to in this

1 telegram?

2 A This air force did not go into Manchuria  
3 directly.

4 Q Where did they go?

5 A When the air force arrived at Shingishu  
6 there was inclement weather and also a breakdown in  
7 aircraft; that the air force withdrew to Shingishu  
8 and to other bases in the rear.

9 Q When did they advance to Manchuria?

10 A About two or three days later.

11 Q Was that without Imperial sanction also?

12 A At that time there was an Imperial Order  
13 sanctioning it.

14 Q That happened after the 22nd of September?

15 A Yes.

16 LR. WOOLWORTH: I have no further questions.

17 LR. BROOKS: May the witness be excused?

18 ACTING PRESIDENT: He is excused accordingly.

19 We will now take a recess for fifteen minutes.

20 (Whereupon, at 1445, a recess was  
21 taken until 1500, after which the proceed-  
22 ings were resumed as follows:)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 ACTING PRESIDENT: The Supreme Commander, hav-  
4 ing directed that Tuesday shall be a legal holiday,  
5 being Armistice Day, this Court will not sit on Tuesday,  
6 November 11.

7 Captain Kraft.

8 LANGUAGE ARBITER (Captain Kraft): If the  
9 Tribunal please, we submit the following language correc-  
10 tion, reference exhibit No. 3431, page 4 last line:  
11 Delete "Korean Army", substitute "Kwantung Army."

12 ACTING PRESIDENT: Captain Brooks.

13 MR. BROOKS: I now offer defense document 2853,  
14 a certificate of illness of the witness SHIDEHARA,  
15 Kijuro.

16 ACTING PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document 2853  
18 will receive exhibit No. 3432.

19 (Whereupon, the document above referred  
20 to was marked defense exhibit No. 3432 and received  
21 in evidence.)

22 MR. BROOKS: I will read exhibit 3432:

23 "Diagnosis.

24 "Name: Kijuro SHIDEHARA. Born: August 11th,  
25 1872.

"Name of illness: Lumbago.

"Severe pain around hips, particularly painful at times when sitting or lying down which makes it difficult to walk.

"It is necessary for him to be confined in bed and to keep warm and quiet for the time being and to have treatment.

"It is certified that the above diagnosis is given by me.

"Dated: November 7th, 1947.

"Dr. Hiroshi H. SHIMOTO

"St. Luke's International Hospital.

"53 Akashicho, Kyobashiku, Tokyo."

The defense offer in evidence defense document 1964, the affidavit of SHIDEHARA, Kijuro.

MR. COMYNS CARR: May it please the Tribunal, the prosecution objects to this affidavit being received without cross-examination and, in view of the stage of the trial which has been reached and the advanced age of the witness, suggests that it be desirable that his cross-examination should be done on commission. It would not be a very lengthy cross-examination, but the matters are of some importance.

MR. BROOKS: If the Court please, I would like to read the affidavit at this time and will agree to

1 the prosecution submitting any questions in interroga-  
2 tories by way of cross-examination. I think we can get  
3 together on the cross-examination being very brief.  
4 They can submit them, put it in writing, and present  
5 it to the Court at our next session. I believe we will  
6 have time to do that over the intervening holiday.

7 I want to point out that this affidavit, on  
8 page 3, defense document 1964, was taken on July 28,  
9 1947. I believe that the rights of the prosecution  
10 for cross-examination can be fully protected by such  
11 interrogatories as they may care to file, and it would  
12 save appointing a commission therefor because I would  
13 be very agreeable to any cross-examination they may want  
14 to make.

15 MR. CONYNS CARR: In the submission of the  
16 prosecution, cross-examination by interrogatories is  
17 extremely unsatisfactory and they would prefer that  
18 the cross-examination should be oral. One can never  
19 be sure what further questions it may become necessary  
20 to put in view of the answers of the witness to those  
21 put in the first instance.

22 With regard to reading the affidavit now, the  
23 prosecution submits that that should not be done until  
24 the cross-examination can be read with it.  
25

MR. BROOKS: On that latter point, your Honor,

1 I would like to have the affidavit read now because it  
2 fits into the orderly procedure and presentation of  
3 this case and makes clearer the understanding of the  
4 documents that will follow and the ones that have just  
5 preceded it. And I submit that it would be better, of  
6 course, if we could have both of them at this time --  
7 both the affidavit and the cross-examination -- but  
8 since the latter is not possible that is no reason  
9 for excluding the former.

10 ACTING PRESIDENT: A majority of the Court  
11 believe that this testimony or the testimony of this  
12 witness should be taken by commission. It is so  
13 ordered.

14 MR. BROOKS: The affidavit will then not be  
15 presented at this time, is that correct?

16 ACTING PRESIDENT: Not admitted at this time.

17 MR. BROOKS: If the Tribunal please, what will  
18 be the date for scheduling this commission? I under-  
19 stand that it is possible that this witness may under-  
20 go an operation. If that is true, at his age there  
21 might be danger of his not recovering and I think an  
22 early date should be set if possible. Might I  
23 suggest that we meet in Chambers with the prosecution  
24 immediately following the adjournment of Court and pass  
25 upon this if it is agreeable?

1 ACTING PRESIDENT: That is agreeable.

2 MR. BROOKS: The defense offers next in  
3 evidence defense document No. 1784, an affidavit of  
4 Patrick J. Hurley, Secretary of War for the United  
5 States in 1931.

6 ACTING PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 1784  
8 will receive exhibit No. 3433.

9 (Whereupon, the document above  
10 referred to was marked defense exhibit  
11 No. 3433 and received in evidence.)

12 MR. BROOKS: I shall read exhibit 3433:

13 "THE UNITED STATES OF AMERICA, et al.

14 -AGAINST-

15 "ARAKI, SADA, et al.

16 "UNITED STATES OF AMERICA

ss.

17 "DISTRICT OF COLUMBIA

18 "I, Patrick J. Hurley, being first duly sworn,  
19 depose and say:

20 "I was Secretary of War for the United States  
21 in 1931 and was in the Far East at the time of the  
22 Manchurian Incident.

23 "I have read the statement made by General  
24 MIAMI commencing on page 19,884 of the Proceedings for  
25 14 April, 1947, starting with line 23 as follows:



1 "I think it was around the middle of October,  
2 1931 when the United States Secretary of War, Mr. Patrick  
3 Hurley, suddenly made a call on me. Mr. Hurley was  
4 Secretary of War in the Hoover Cabinet. His mission  
5 was to survey and investigate conditions in the  
6 Philippines and it was on his return home to the United  
7 States that the Manchurian Incident broke out. On  
8 account of that incident he paid me this sudden call.

9 "At that time Mr. Hurley said that he was to  
10 return to the United States immediately after complet-  
11 ing his investigation of conditions in the Philippines  
12 but that in the light of the new situation he was  
13 exceedingly desirous of meeting me, the War Minister,  
14 directly to ask me about the incident. At that time  
15 Mr. Hurley addressed me three simple and direct ques-  
16 tions:

17 "First question: How did the Lukuechiao" --  
18 that should be spelled L-i-u hyphen t apostrophe i-a-u  
19 hyphen k-o-u.-- "Incident break out?

20 "The second question: How far were the  
21 hostilities going to continue?

22 "And the third point was: Is Japan going to  
23 occupy Manchuria? Is Manchuria going to be made a  
24 protectorate of Japan or is Manchuria going to become  
25 an independent state? That was the third question.

1           "With regard to the first question I replied  
2           that the L-i-u hyphen t apostrophe i-a-u hyphen k-o-u  
3           Incident occurred as a result of the destructive action  
4           by regular troops of the Chinese Army, and that the  
5           Japanese had taken action in exercise of a legitimate  
6           right of self-defense for the protection of their  
7           interests.

8           " In reply to the second question I said that  
9           hostilities had already begun, but that it was the  
10          policy of the Japanese Government to do whatever was  
11          in its power to bring about a local settlement of the  
12          incident, and that it was going to pursue a policy of  
13          nonextension and nonaggravation. However, that the  
14          Japanese Government was unable to predict how far the  
15          hostilities might be extended, it all depending on  
16          the actions that might be taken on the Chinese side.

1           " "With regard to the third question I said  
2 that Japan had never at any time conceived of the idea  
3 of taking Manchuria as her territory or to make Man-  
4 churia a protectorate of Japan, nor even to assist  
5 in the independence of that country. And finally I  
6 said that this was the policy of the Government of  
7 Japan and that as a Cabinet Minister I supported this  
8 policy.  
9

10           " "And, therefore, with regard to the question  
11 that was asked of me awhile ago I must say that such  
12 a thing had never at any time occurred in my mind at  
13 that time. Mr. Hurley well understood my explanation  
14 of the situation and told me that it was worth-while  
15 seeing me because he had carried out the purpose of  
16 his call on me, and gave me his photograph as a souvenir.  
17

18           " "I feel that what I have just related to  
19 you will be of some assistance to you with regard to  
20 your question because the remarks that I made to Mr.  
21 Hurley were straightforward remarks which were con-  
22 sistent with the situation as it then existed.  
23

24           " "Q When did this conversation with Mr. Hur-  
25 ley take place?

          " "A I do not remember the date, but I think  
it was in the middle of October."

          " "I recall meeting General MINAMI around the

1 middle of October 1931 and addressing him on the  
2 points quoted above, and receiving in reply substan-  
3 tially the aforesaid answers.

4 "General MINAMI advised me that the policy  
5 of the WAKATSUKI Cabinet was to remain within the  
6 principles of the Nine Power Pact, to limit the  
7 effect of the Mukden Incident, and to maintain friendly  
8 relations with the League of Nations.

9 "I also remember having presented General  
10 MINAMI with one of my photographs and receiving one  
11 from him.

12 "Signed: Patrick J. Hurley.

13 "Subscribed and sworn to before me at Wash-  
14 ington, District of Columbia, this 7th day of June,  
15 1947.

16 "Maurice Love, Notary Public, District of  
17 Columbia."

18 Now, I request that KAWABE, Torashiro be  
19 called as the next witness.

20 MARSHAL OF THE COURT: Mr. President, the  
21 witness KAWABE, Torashiro is in court. He has prev-  
22 iously testified before this Tribunal.  
23  
24  
25

1 T O R A S H I R O K A W A B E, recalled as a wit-  
2 ness on behalf of the defense, having been pre-  
3 viously sworn, testified through Japanese inter-  
4 preters as follows:

5 ACTING PRESIDENT: You are reminded that you  
6 are still under oath.

7 DIRECT EXAMINATION

8 BY MR. BROOKS:

9 Q State your name and address, please.

10 A My name is KAWABE, Torashiro; my address,  
11 460 Azo-o-machi, Jindai-mura, Tokyo Metropolis.

12 MR. BROOKS: I ask that defense document  
13 2588 be shown to the witness.

14 (Whereupon, a document was handed to  
15 the witness.)

16 Q Is it your affidavit?

17 A Yes.

18 Q Are the contents thereof true and correct?

19 A Yes.

20 MR. BROOKS: I offer defense document 2588 in  
21 evidence.

22 MR. WOOLWORTH: If the Tribunal please, the  
23 prosecution desires to object to paragraph 5 of this  
24 affidavit, appearing at pages 5 and 6, on the ground  
25 that it is argumentative, not proper. And, further,



1 to that part of paragraph 2 on page 2 beginning  
2 "After his arrival--" and ending at the end of the para-  
3 graph. The instructions given are the best evidence.

4 MR. BROOKS: If your Honor please, this is  
5 secondary evidence as to these instructions and is the  
6 only evidence available of the instructions, what they  
7 are, is what this witness recalls of them because of  
8 the functions that he performed with the General Staff  
9 at that time. And because of his position I think he  
10 is capable of testifying as a matter of fact as to the  
11 things that happened which have some relation to the  
12 testimony of MINAMI, as will be pointed out later.  
13 The prosecution can attack this by way of cross-  
14 examination because we are putting it in to confirm  
15 certain matters, and I think cross-examination is the  
16 proper way to meet this rather than by objection. We  
17 admit that it will not have as much probative value  
18 as the original instructions if they could be pro-  
19 duced, but we do assert that it has some probative  
20 value and should be received for whatever probative  
21 value it may have, depending upon cross-examination  
22 of the prosecution.

23 That is all I have, your Honor.

24 ACTING PRESIDENT: By a majority, the objec-  
25 tion is sustained as to paragraph 5, and overruled as

1 to paragraph 2.

2 Omitting paragraph 5, the document will be  
3 received in evidence.

4 CLERK OF THE COURT: Defense document 2588  
5 will receive exhibit No. 3434.

6 (Whereupon, the document above re-  
7 ferred to was marked defense exhibit No. 3434,  
8 and received in evidence.)

9 MR. BROOKS: I shall read exhibit 3434 from  
10 paragraph 1 to the end of paragraph 4.

11 "I, KAWABE, Torashiro, was the senior member  
12 of the Second Section (in charge of operations) of  
13 the General Staff, Tokyo, from April 1929 to January  
14 1932.

15 "Referring to the series of telegram copies  
16 contained in defense document No. 2048 A-P, I affirm  
17 that B, D, F, L, M and N are correct copies of these  
18 telegrams which were drafted by my section (mostly by  
19 myself) and despatched to the Commander of Kwantung  
20 Army or his Chief of Staff under the name of the  
21 Chief of General Staff or the Vice-Chief of General  
22 Staff. The telegram embodied in E was received by  
23 the General Staff from the Kwantung Army, and I remember  
24 that I read it at that time. C, G, H, I, J and K are  
25 copies of telegrams despatched from the War Ministry

1 to the Kwantung Army. Although they dealt with mat-  
2 ters not under the jurisdiction of the General Staff,  
3 I was acquainted with the fact that these telegrams  
4 were despatched at that time because of the business  
5 contact between the War Ministry and the General Staff."

6 I want to ask a question here, Language Sec-  
7 tion.

8 I request that exhibit 3422 A to P, defense  
9 document 2048 A to P, be shown to the witness.

10 (Whereupon, documents were handed  
11 to the witness.)

12 Q Are these true copies of the telegrams re-  
13 ferred to in paragraph 1 of your affidavit?

14 A They are.  
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1 MR. BROOKS: I continue reading exhibit  
2 3434, from paragraph 2, page 2, to the end of  
3 paragraph 4:

4 "I was a staff officer of the Kwantung Army  
5 from August 1934 to March 1936, and the Chief of the  
6 Second Section (in charge of intelligence) from  
7 August 1935, within that period. Lieutenant-Colonel  
8 TANAKA, Ryukichi, was my subordinate as a staff  
9 officer attached to the Second Section.

10 "In December 1934" -- there is an error  
11 there. It should be "'34" instead of "'35."

12 "In December 1934 General MINAMI arrived  
13 at his post as Commander of Kwantung Army and Amba-  
14 sador plenipotentiary to Manchukuo. After his  
15 arrival the General gave officers and men frequent  
16 instructions, the majority of which were drafted by  
17 me as a matter of duty. These instructions were made  
18 naturally to serve different purposes of respective  
19 occasions, but there were two ideas consistently  
20 running through all, namely, (1) respect for and  
21 assistance to independent Manchukuo, and (2) self-  
22 reflection and elimination of the vain feeling of  
23 Japanese superiority. I remember that whenever  
24 these two were contained in the draft of an instruc-  
25 tion, I could obtain the signature of the Commander

1 without hitch. Not only such was the sentiment of  
2 General MINAMI, but all of us working under him be-  
3 lieved firmly in the fact that Manchukuo would secure  
4 her international status as a perfect independent  
5 country.

6 "3. The Kwantung Army at that time held  
7 the maintenance of peace and order within Manchukuo  
8 as the primary duty under the Japan-Manchukuo proto-  
9 col. The troops were put in dispersed positions to  
10 the extreme, suffering the inadequacy from the mili-  
11 tary point of view for the defense against dangers  
12 from outside of Manchukuo. Hence, the disposition of  
13 the army was even more inadequate for any offensive  
14 towards U. S. S. R. or China.

15 "In May 1935 War Minister HAYASHI came to  
16 Manchuria to inspect the condition of the army there.  
17 Incidentally, about that time, the so-called UMEZU-Ho  
18 Yin-Chin Agreement was concluded in North China.  
19 Connecting with these events various rumors were  
20 reported in foreign newspapers, but I regret to say  
21 that such reports were full of falsehood. For in-  
22 stance, I point out the following items in exhibit  
23 2206-A.

24 "(a) The article to the effect that War  
25 Minister HAYASHI reiterated in Mukden that the North



1 China problem was to be handled by the Kwantung  
2 Army (New York Times, June 6, 1935) is entirely a  
3 fabrication. In view of distinct systems of command  
4 and duties of the Kwantung Army and the North China  
5 Army respectively, War Minister HAYASHI would abso-  
6 lutely never have made such a statement.

7 "(b) The articles to the effect that  
8 General MINAMI issued secret instructions to the  
9 Kwantung Army to hold themselves ready to pour into  
10 China (Tribune, June 9, 1935); Sacramento Tribune,  
11 June 8, 1935; Oakland Tribune, June 9, 1935) are  
12 also false. Such instructions could not be given  
13 without a directive from the Central Supreme Com-  
14 mand, a directive which, if any, would surely have  
15 been brought to my notice as a matter of function.

16 "(c) The article to the effect that the  
17 Kwantung Army moved 5,000 troops from Mukden to  
18 Shanhaikwan (New York Times, June 13, 1935) is also  
19 false. The Kwantung Army was in such a condition at  
20 that time as it was inconceivable to concentrate so  
21 many troops at one spot.

22 "(d) The article to the effect that the  
23 army requested Prince Toh of Inner Mongolia to move  
24 his capital to a place 180 miles to the north of  
25 Pailingmiao (New York Herald Tribune, June 2, 1935)

1 China problem was to be handled by the Kwantung  
2 Army (New York Times, June 6, 1935) is entirely a  
3 fabrication. In view of distinct systems of command  
4 and duties of the Kwantung Army and the North China  
5 Army respectively, War Minister HAYASHI would abso-  
6 lutely never have made such a statement.

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13 without a directive from the Central Supreme Com-  
14 mand, a directive which, if any, would surely have  
15 been brought to my notice as a matter of function.

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19 false. The Kwantung Army was in such a condition at  
20 that time as it was inconceivable to concentrate so  
21 many troops at one spot.

22 "(d) The article to the effect that the  
23 army requested Prince Toh of Inner Mongolia to move  
24 his capital to a place 180 miles to the north of  
25 Pailingmiao (New York Herald Tribune, June 2, 1935)

1 is also false.

2 "(e) Besides the above-mentioned items and  
3 with regard to matters not directly connected with  
4 the Kwantung Army, I find many canards which are  
5 totally beyond my experience and knowledge of the  
6 Japanese Army in general.

7 "In addition to the above comments on  
8 reports of foreign sources, I must say in conclusion  
9 that during the time when I was a staff officer of the  
10 Kwantung Army there was no such fact as the Kwantung  
11 Army issued anything like an ultimatum to China or  
12 brought a similar pressure to bear upon her.

13 "4. Referring to the testimony of Mr.  
14 TANAKA, Ryukichi, made at this Tribunal on July 8  
15 last year, to the effect that during the tenure of  
16 office of General MINAMI as Commander of Kwantung  
17 Army two brigades were sent to the demilitarized zone,  
18 south of the Great Wall (C. R. pp. 2,118, 2,119), I  
19 state definitely that there was no such fact. As to  
20 his testimony to the effect that two battalions of  
21 cavalry were sent to Chahar (C. R. p. 2,118), I have  
22 no recollection whatever of such a case. I can say  
23 that I have a memory, amounting to conviction, on the  
24 troop disposition which incapacitated the Kwantung  
25 Army at that time to send expeditiously any such unit

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1 of cavalry out of the border into the Chahar Province.

2 "The only instance, which I remember as the  
3 case of a small unit of the Kwantung Army moving into  
4 the demilitarized zone of North China, occurred in  
5 the beginning of summer 1935. A small unit (about  
6 one or two companies) of the 7th Division, which was  
7 operating against a strong bandit force near the  
8 frontier of Jehol, crossed into the demilitarized  
9 zone in pursuit, but withdrew immediately within  
10 the border."

11 You may cross-examine.

12 ACTING PRESIDENT: Colonel Woolworth.

13 MR. WOOLWORTH: If the Tribunal please:

14 CROSS-EXAMINATION

15 BY MR. WOOLWORTH:

16 Q How many troops were in the Kwantung Army  
17 during the year 1935?

18 A In 1935 the main strength of the Kwantung  
19 Army was composed of two divisions: one mixed brigade  
20 and one mechanized brigade.

21 Q And how many troops did that involve?

22 A Thinking it over now, I think that the total  
23 strength amounted to somewhere around 30,000, but I  
24 cannot give you the exact figures.

25 Q Who was in command of the mixed brigade?



1           A    I recall it was Lieutenant-General KAWA-  
2 GISHI.

3           Q    Was his first name Bunzaburo?

4           A    Yes, Bunzaburo.

5           Q    Do you recall the fact that in May of 1935  
6 he moved a part of his brigade, consisting of one  
7 regiment of infantry and one company of mountain  
8 artillery, beyond the Great Wall?

9           A    May I ask you once again with respect to  
10 the date? Did you say May, 1935?

11          Q    May, 1935.

12          A    I don't recall it, and I don't believe that  
13 such a thing happened.

14          Q    Weren't you in a position to know what was  
15 going on with this mixed brigade?

16          A    Yes, that is why I told you I  
17 believe they did not do any such thing.  
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1 Q You were aware, also, that in the early  
2 part of June, 1935, that mixed brigade was mobilized  
3 at the Great Wall?

4 THE MONITOR: Colonel Woolworth, do you mean  
5 mobilized to initiate some action, or to concentrate?

6 MR. WOOLWORTH: I mean to concentrate.

7 THE MONITOR: Thank you, sir. No corrections.

8 A It is not in my recollection.

9 Q Do you know of a place called Kupeikou?

10 A Yes.

11 Q And you say that that brigade was not mobi-  
12 lized at Kupeikou in June, 1935?

13 A I do not recall for sure.

14 Q When were they mobilized there if they were  
15 not mobilized in June?

16 A What I am trying to tell you is not whether  
17 I recall whether they were mobilized in May or in June,  
18 but the fact that I don't recall at all that this  
19 brigade was ever mobilized.

20 THE MONITOR: By the order of the Kwantung  
21 Army.

22 Q Were they ever concentrated there?

23 A I don't remember.

24 Q Are you acquainted with General KAWAGISHI,  
25 Bunzaburo?

A Yes, I know him.

1 Q Do you consider him honest?

2 A Yes, I do.

3 Q If he stated that his brigade, his mixed  
4 brigade, was concentrated at Kupeikou in June, 1935,  
5 on the orders of the Kwantung Army, would you believe  
6 him?

7 R. BROOKS: I object to that question as  
8 immaterial and irrelevant. It is a matter for the  
9 Court.

10 ACTING PRESIDENT: Objection overruled.

11 A If you give me convincing proof that such  
12 orders were given, I will believe it; but at the pre-  
13 sent moment I do not recall such orders ever having  
14 been issued at all.

15 Q You state that the statement contained in  
16 the New York Times' article of June 6 in regard to the  
17 fact that Minister HAYASHI stated that the North China  
18 problem was to be handled by the Kwantung Army is  
19 entirely a fabrication. I ask you, if you substituted  
20 the word "North China Army" for "Kwantung Army," would  
21 it still be a fabrication?  
22

23 A I am sorry, I could not get your question. I  
24 feel there must have been some mistake in the inter-  
25 pretation.

1 THE MONITOR: English court reporter, will  
2 you read the question?

3 (Whereupon, the last question was  
4 read by the official court reporter.)

5 THE MONITOR: Japanese court reporter.

6 (Whereupon, the last question was  
7 read by the Japanese court reporter.)

8 THE WITNESS: I feel that the question that  
9 the prosecutor directed to me is contrary to my own  
10 statement in my affidavit.

11 MR. WOOLWORTH: I ask that the witness be  
12 directed to answer the question.

13 MR. BROOKS: If the Court please, I ask that  
14 the language arbiter check that question. I think it  
15 has been interpreted exactly opposite to what the  
16 prosecutor asked.

17 ACTING PRESIDENT: I suggest that you ask  
18 another question.

19 MR. WOOLWORTH: Yes.

20 Q I ask the witness to turn to the article in  
21 the New York Times of June 6 which reported War Minis-  
22 ter HAYASHI as stating that the North China problem  
23 was to be handled by the Kwantung Army, if that would  
24 be correct if you would substitute "North China Army"  
25 for the words "Kwantung Army"; the statement in the

1 paper would then be correct?

2 A Well, that would be my own opinion; but in  
3 my opinion even if you substituted the word "North  
4 China" for "Kwantung" Army, even then it would not  
5 be right.

6 Q You have heard of instructions being given  
7 by Japanese army commanders, have you not, without  
8 a directive from the central supreme command?

9 A No, I have never heard of that.

10 Q Did you know that the Korean Army was moved  
11 into Manchuria without orders from the supreme command?

12 A That I knew.

13 Q And when you stated that the articles to  
14 the effect that General MINAMI issued instructions to  
15 the Kwantung Army were false because such instructions  
16 could not be given without a directive from the central  
17 supreme command, you were mistaken, were you not?

18 MR. BROOKS: I object to that question as  
19 misstating the wording and intent of the witness'  
20 statement as appears on the bottom of page 3 of exhib-  
21 it 3434.

22 ACTING PRESIDENT: Objection overruled.

23 A I feel that what I said -- I feel that there  
24 was no mistake in what I said.

25 Q It is true, however, that there have been

1 cases of troops being moved without authority of the  
2 central high command?

3 A The measure taken by the Commander of the  
4 Korean Army at the time of the sudden outbreak of the  
5 Manchurian Incident was extraordinary in the extreme,  
6 and later the Commander of the Korean Army took further  
7 measures while continuing negotiations with the central  
8 authorities, and I think you can call this an exception  
9 among exceptions.

10 Q There are exceptions to the rule, then.

11 Now, General MINAMI was familiar with the  
12 number of troops in the Kwantung Army, was he not?

13 A I believe he was fully aware of that; at least  
14 with the general figures and the general disposition  
15 of the troops.

16 Q If he stated, then, that there were 60,000  
17 troops in the Kwantung Army between 1934 and 1936,  
18 you would believe his statement, would you?

19 A Yes, I would.

20 Q And if you read his statement that there were  
21 60,000 troops in Manchuria during the time you served  
22 on his staff, you would admit that you were mistaken  
23 when you said 30,000, would you not?

24 A There that point needs clarification. When  
25 you asked me your question in regard to the numerical



1 strength of the Kwantung Army, I told you of the num-  
2 ber of divisions and other units of the Kwantung Army  
3 and the approximate numerical strength such as a number  
4 of divisions would represent, speaking from my memory  
5 at the present time.

6 THE MONITOR: Divisions and other units.

7 A (Continuing) But besides the units, types  
8 of units, which I mentioned, there were technical units,  
9 communication units, railway guards, hospital units --  
10 although the number of hospitals, of course, was  
11 limited -- and many other special units; and if you  
12 count these, it is quite true that the total number  
13 would come to more than 30,000.

14 ACTING PRESIDENT: We will adjourn until  
15 nine-thirty on Wednesday morning.

16 (Whereupon, at 1600, an adjournment  
17 was taken until Wednesday, 12 November 1947,  
18 at 0930.)  
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